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Legal Aid At Work:
Public Defenders in Brazil's Penal Courts

by

Maria-Fátima Santos

A dissertation submitted in partial satisfaction of the
requirements for the degree of

Doctor of Philosophy

in

Sociology

and the Designated Emphasis

in

Critical Theory

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Loïc Wacquant, Chair

Professor Mara Loveman

Professor Jonathan Simon

Fall 2024

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Public Defenders in Brazil's Penal Courts

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by

Maria-Fátima Santos

Abstract

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Maria-Fátima Santos

Doctor of Philosophy in Sociology

Designated Emphasis in Critical Theory

University of California, Berkeley

Professor Loïc Wacquant, Chair

Over the past three decades, Brazil's return to democracy has coincided with an unprecedented number of people being arrested by policing forces, processed in penal courts, and detained in carceral facilities. This penal state expansion has overwhelmingly impacted poor people and disproportionately those who identify as *preto* ("black") or *pardo* ("brown" or "mixed race"). Brazil's written penal procedure code requires that every person facing state prosecution have a defense attorney to counsel and represent them in court. However, most people facing prosecution in Brazil do not have the economic means to pay for someone with legal expertise to counsel them. Instead, they are provided counsel by a public defender, a state-employed staff attorney mandated to provide legal aid to indigent defendants. This dissertation asks: (1) *Why do law graduates become legal aid professionals?* (2) *How do they understand their work mandate?* (3) *How do they influence penal court processes?*

Legal aid workers are taken-for-granted actors in many penal courtrooms across the globe today. However, little is known or understood about the people who provide legal aid to the poor. Written laws often enshrine this service as a crucial instrument for ensuring people's right to "fair trial" or "due process"; yet a vast literature demonstrates how penal practices produce and reinforce inequalities, revealing the ideal of "fairness" as but a chimera. Studies highlight the obstacles legal aid professionals face to effectively defending their clients' interests in court; by contrast, the ways in which they *do* influence penal power remains undertheorized.

In contrast to more familiar accounts of legal aid workers as mechanisms of "access to justice," I draw on the sociology of work, penality and state power to conceptualize legal aid workers as occupation, profession, and fabricators of legal power. First, legal aid professionals' profiles and the reasons they choose this work are important to understanding the worldviews and commitments of the people who provide this service. Research shows that law graduates may be motivated to work in legal aid for various practical or political reasons. Yet not all candidates interested in such work are necessarily admitted to the position. I argue that the requirements of

entry and the nature of competition (or not) over these positions is crucial to explaining who actually becomes a legal aid worker. Moreover, be it that they are initially driven to this work by pragmatic motivations, political ones, or a combination of both, the features of legal aid work routines influence who chooses to provide this service long term, and why.

Second, as professionals, legal aid workers are holders of license and expertise that position them to be able to address certain problems for clients through their services. Research shows that legal aid workers emphasize zealousness as an important characteristic of their professional ideal under conditions in which they and their clients are up against innumerable challenges. But the orientation of any professional's zealousness depends on how they understand their mandate. I argue that legal aid workers' understanding of their role is influenced by what they perceive to be distinctive of their position within the broader division of court work at ground level.

Third, through their everyday work, court authorities classify people and behaviors in ways that orient how and toward whom states exercise penal power. Contrary to traditional depictions of them as "enforcers" of the law, they do so by *fabricating* legal power. However, court processes and outcomes are shaped by various social dynamics. I argue that legal aid workers seek to mitigate the punishment their clients face amid these arbitrary forces through strategies to influence interpretations of their client's 'criminality' and the 'just measure' of state force. It is through these strategies that they both reduce the harm individual clients face while also contributing to court routines that naturalize the selectivity of penal state power.

To develop these arguments, I investigate the trajectories, perspectives and work practices of public defenders in two Brazilian cities (Salvador and São Paulo). In both cities, public defenders are the primary source of counsel for most people facing prosecution. Yet legal aid is influenced in locally distinct ways amid democratization, state-building, and Brazil's most dramatic transformation in penal procedures in two centuries. Drawing on interviews, participant observation and case-processing data collected over the course of 36 months of fieldwork, I analyze public defenders in these two jurisdictions to elaborate key dynamics that influence who becomes a legal aid worker, the services they believe they can provide to their clients, and their strategies to influence court processes.

In the first empirical chapter I demonstrate that increasingly high public defender salaries, job stability, and prestige of the position have made the public defender a highly sought-after occupation country-wide amid a hypercompetitive market for law graduates. New education initiatives have greatly increased access to law degrees for people from less advantaged social positions since democratization; however, possessing the resources to successfully vie over a limited number of spots in public defender offices has largely reserved the occupation for Brazil's white elites—whose experiences are drastically different from the poverty, violence and racism lived by their clients. On the one hand, the practical advantages of the position have facilitated retention of legal aid workers from top law schools guided by a strong commitment to providing services to socially marginalized people. On the other, they have also attracted people who may be otherwise disinterested in the problems of their clients. However, I find that differences in the degree of interaction between defenders and poor people in local work routines influences who chooses to work in each city's penal courts long term.

In the second empirical chapter I elaborate three roles public defenders believe they can play for their clients: (1) harm reducers; (2) bearers of information; and (3) humanizers. In both cities, public defender work is organized into three distinct stages; across both cities and all three stages, many public defenders emphasize their role as harm reducers based on the technical legal expertise that characterizes their professional craft. By contrast, emphases on their roles as information bearers and humanizers varied more widely. Far from reducible to personality or ideology, I show how variation is also shaped by differences in the resources, interactions and environments that characterize their ground level work.

In the third empirical chapter, I focus on public defenders who counsel poor people facing prosecution for drug trafficking in São Paulo, which accounts for the largest portion of people incarcerated in Brazil's largest metropolis. I dissect three strategies they employ to mitigate the punishment clients face: instigating doubt, contestation, and negotiation. By analyzing why the same public defender employs different strategies between courtrooms, I identify two key dynamics that influence their possibilities for intervention: (1) prosecutors' and judges' relative (dis)trust in the validity of police work and (2) public defenders' perceptions of the likely (mis)alignment between trial judges' legal interpretations and those of higher courts. I demonstrate how probing legal aid strategies is a useful method to identify, synthesize and compare the arbitrary forces that influence court processes and outcomes.

In the concluding chapter, I summarize my key empirical findings and elaborate an agenda for future inquiry on legal aid. I also discuss the study's broader contributions to scholarship on penalty, state power and work.

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I. LEGAL AID AND PENAL STATE POWER

Introduction

Since inception of the Brazilian state in the 19th century, coercive state practices have been deployed to maintain highly unequal labor regimes along ethnic and racialized lines (Beattie 2015; Dos Santos et al. 2020). This vertiginously unequal society has been profoundly shaped by centuries of western European colonial rule and regimes systematically dependent on the forced labor of Indigenous and Afro-diasporic peoples (Nascimento 1976; Schwarcz and Starling 2015). Indeed, the country's first policing forces emerged to protect regimes of enslavement and forced labor, including by catching runaway enslaved people and attempting to repress their organized revolt against such systems of fatalistic exploitation (Holloway 2001; Reis 2004). Following the formal abolition of slavery in the late 19th century, Brazilian elites engaged in dramatic state efforts to encourage the mass migration of people from western European countries to work in the country's newly consolidating systems of waged agrarian labor (Carlson 2022); this miscegenation project together with the criminalization of vagrancy and practices associated with Black and Brown peoples advanced an explicit project of ethno-racial "whitening" and erasure of the country's "Black stain" (Dos Santos 2002, p. 75; Santos 2022, p. 7). Poor people, and disproportionately those who are ethno-racially marginalized have therefore always been the primary targets of Brazil's penal state power. Yet since the late 20th century state authorities have developed an unprecedented capacity to exercise penal state coercion.

Brazil's ending of a 21-year dictatorship (1964 – 1985) and return to electoral democracy in the late 20th century coincided with sky-high rates of violence caused by a combination of forces—from transnational dynamics of neoliberalism, to the boom and militarization of drug control, and political instabilities generated from the process of returning to democracy (Arias 2006; Arias and Goldstein 2010; Manso and Dias 2018). Amid widespread public insecurities about violence, policies tasked with addressing ordinary citizens' anxieties rendered penal state expansion a core legitimizing strategy for politicians across party lines (Cifali and Azevedo 2017).¹ In the first decade of the 21st century alone, the number of police officers increased by over 50 percent (Bergman and Fondevila 2021, p. 63), and an unprecedented number of people have been arrested by Brazil's policing forces, processed in penal courts, and detained behind carceral walls (Macaulay 2019; Santos 2022). In 2018 alone, policing authorities submitted over 7 million charges of alleged criminalized acts to public prosecutor offices (CNMP 2018, p. 2017).

Brazil's written penal procedure code requires that every person facing state prosecution have a defense attorney to counsel and represent them in court. However, the overwhelming majority of people facing state prosecution in Brazil do not have the economic means to pay for

¹ Like most countries in Latin America, homicides and armed conflict in Brazil have increased tremendously. For further elaboration the dynamics of violence in contemporary Latin America, see: Auyero and Sobering 2017; Arias 2006; Arias and Goldstein 2010; Villareal 2024; Manso 2020; Müller 2018; Youngers and Rosin 2006.

a private lawyer. Instead, most people are provided legal counsel by a public defender, a state-employed staff attorney serving indigent defendants (ANADEP 2021). In this dissertation, I seek to answer questions that are integral to the formation and deployment of such legal aid in the country's courts.

(1) Why do attorneys provide legal aid to poor people in penal courts? (2) How do they understand their professional mandate? (3) How do they influence penal court processes?

Legal aid workers are taken-for-granted actors in many penal courtrooms across the globe today. However, little is known or understood about the profiles and trajectories of the lawyers who provide legal aid to the poor, who comprise the overwhelming majority of people targeted by penal state capacities (González 2021; Neocleous 2000; Wacquant 2009). Written laws often enshrine legal aid as a crucial instrument for ensuring people's right to "fair trial" or "due process" (Bryant and Garth 1978); however, a vast literature demonstrates how penal state practices actively produce and reinforce social inequalities (Alexander 2010; Alves 2018; Castillo 2016; Gibson 2011; Feeley 1979; González Van Cleve 2016; Zinoman 2001), revealing the ideal of "fairness" as but a chimera. Moreover, existing empirical studies highlight the numerous obstacles legal aid professionals face to effectively defending their clients' interests in court (Backus and Marcus 2006; Bogira 2005; Wice 2005), yet we know little about how they do influence court processes.

In contrast to more familiar accounts of legal aid workers providing "access to justice," I draw on the sociology of work, penality and state power to conceptualize legal aid workers as occupation, profession, and fabricators of legal power. First, I argue that the requirements of entry and the nature of competition (or not) over legal aid occupations is crucial to explaining who actually becomes a legal aid worker. Moreover, be it that they are initially driven to this work by pragmatic motivations, political ones, or a combination of both, practical legal aid work routines influence who chooses to provide this service long term, and why. Second, as professionals, legal aid workers possess license and expertise that make them contenders to solve certain problems for their clients. I argue that legal aid workers' understanding of their role and professional objectives are influenced by the resources, people and spaces they can access from their position within the broader division of court labor. Third, through their everyday work, court authorities classify people and behaviors in ways that orient how and toward whom states exercise penal power. I argue that legal aid professionals influence court processes through their strategies to mitigate the punishment their clients face; employing these strategies entails a labor of interpretation to navigate the arbitrary forces that constrain legal classification within their individual courtrooms.

To develop this argument, I investigate the trajectories, perspectives and everyday work practices of public defenders in two Brazilian cities (Salvador and São Paulo). In both cities, these legal aid workers are the primary source of counsel for most people facing prosecution, who are overwhelmingly poor and disproportionately *preto* ("black") and *pardo* ("brown"). Yet, legal aid is influenced in locally distinct ways against the backdrop of democratization, state-building, and Brazil's most dramatic transformation in penal procedures in two centuries. Drawing on data collected over the course of 36 months of fieldwork, I draw on my analysis of public defenders in these two contrasting jurisdictions to uncover the forces that shape who provides legal aid to poor people, the roles legal aid workers can play throughout the penal process, and their influence on penal court processes.

In this chapter, I first provide a brief historical overview of legal aid in global historical perspective. Second, drawing on theories of state power, sociology of work, and "law-in-action"

studies, I develop a framework that conceptualizes legal aid workers as occupation, profession and fabricators of legal power. Third, I elaborate my methodological approach. Fourth, I summarize my main findings and organization of the dissertation's subsequent chapters.

Legal aid and penal state power

Between the 18th and early 20th centuries, written guarantees of the “right to legal counsel” became integral to new state republics across the western hemisphere. During the mid-20th century, providing access to legal counsel for poor people became widely adopted in written laws as a specific obligation of *the state* in many countries. Transnational networks of legal scholars, entrepreneurs and reformers since this period have hailed systematic access to legal services and expertise as essential mechanisms for advancing conceptions of “access to justice” described as crucial to advancing liberal ideals of “rule of law” (Abel 2022; Alves and González 2017; Hunter, Olesen and Sandefur 2022; Parker 1999). Economic deregulation policies and “neoliberal ideals” since the late 20th century resulted in the “retrenchment and reorganization” of legal aid for poor people in various domains in countries such as England, Scandinavia, the United States, and Wales (Hunter, Olesen and Sandefur 2022). By contrast, reforms grounded in liberal ideals of “rule of law” and “access to justice” have ushered in unprecedented expansion of legal aid infrastructures and domains in various other countries over this same period—from Argentina, to Brazil, China, Colombia, Mexico, and the Philippines (CEJA 2018; Ciocchini 2017; Ribeiro and Fondevila 2023).

The scale of legal aid and the domains within which it is provided have varied across time and place; yet legal aid for people facing state prosecution or punishment has been a constant priority for reformers in many countries (Alves and González 2017; Mayeux 2020; McIntyre 1987). State rulers’ ability to routinely guarantee legal aid in penal court depends on several factors, including the availability of material resources and political will to consolidate an administrative system by which this service can be routinely provided to poor people. Indeed, legal aid has been provided by various organizational means—from law students working through volunteer law school clinics or non-profit organizations; to private attorneys working as outsourced agents of the judiciary or through pro-bono services of law firms; and state-employed staff attorneys (Bryant and Garth 1978; Alves 2006; Ribeiro and Fondevila 2023).

The means by which legal aid is provided, and who qualifies to receive this service is also influenced by political and professional struggles over the relationship between the state, market, and legal experts (Mayeux 2020; Miraglia 2016; Nunes 2016). For example, when public defender offices originated in the United States in the early 20th century, they were at first treated as entities of great contention: as *state institutions* mandated to legally defend people facing prosecution *from the state*, they were widely criticized as “totalitarian” and consonant with communism. By contrast, over the second half of the 20th century, they became “reimagined as an anti-communist weapon,” and a beacon of “the state’s regard for individual rights,” spawning development of offices across the country (Mayeux 2020).

Like any administrative function, the ability to routinely provide this service depends on legal aid entities’ ability to recruit and retain staff (Wice 2005). However, research has largely focused on cases in which legal aid organizations have faced challenges to recruiting people to work in such positions. In cases analyzed of public defender offices in the United States, for example, it has shown to be especially difficult to recruit and retain people long term. Relentlessly high case-loads, low pay relative to other job alternatives for law graduates, and the

cultural stigma of the public defender as a person who “defends criminals” have made it especially challenging for offices to retain people, especially those with strong legal training (González Van Cleve 2016; McIntyre 1987; Wice 2005). Studies on public defenders’ motivations (Weiss 2005; Wice 2005) in such contexts document various “intrinsic” and “extrinsic” advantages lawyers may perceive them to provide (Baćak, Lageson, and Powell 2020). However, the focus on cases where offices facing challenges to recruitment and retention overlooks the fact that not all lawyers interested to work in legal aid are necessarily admitted to the position. Moreover, we know little about what may influence their decisions to stay long term, or not.

Written penal procedures in many countries enshrine legal aid as essential to guaranteeing poor people’s right to “fair trial” and “due process.” Legal expertise can indeed be a useful resource in various contexts for people to keep in check state authorities’ practices and abuses of power (Ungar 2002; Brinks 2010; Simon 2016). Yet written laws and legally sanctioned practices themselves also produce, maintain, and reinforce unequal social orders along various lines of social exclusion (Fanon 2008; Haney-López 2011; Alexander 2010; Nader 2008; Hernández 2011; Hathazy and Müller 2016). Studies of public defenders in the U.S. demonstrate their deep awareness of the unique moral tensions of their work. Wice (2005) shows how U.S. public defenders come to define professional excellence in terms of their “zealousness” amid the many challenges they face to serve their clients. However, zealousness refers to a level of motivation that must be oriented toward what they perceive to be their professional role in relation to their clients.

Legal aid workers are a key resource of protection for poor people facing one of the most coercive dimensions of state power: penal sanction. Yet the routine provision of this service also functions to legitimize processes and outcomes of penal courts, which have shown to further reinforce and produce inequalities (Ciocchini 2017; Feeley 1979; Lages and Ribeiro 2019). Recent scholarship demonstrates how the practices and subjective points of view of legal aid workers themselves can compound the social disadvantages of poor people in penal courts along racialized lines (Clair 2020; González Van Cleve 2016). McIntyre’s conceptualization of this “janus-faced” function of legal aid is useful to spotlight the ways in which legal aid operates as a resource for state authorities on the one side, and poor people who are subjected to their persecution and sanction on the other. Empirical studies largely focus on the many obstacles legal aid workers face to defending their clients in court—from the lack of administrative autonomy of certain organizations within which they work, to resource shortages amid high caseloads, and the difficulties of establishing rapport with their clients who may distrust their intentions or abilities (Backus and Marcus 2006; Bogira 2005). Some studies provide accounts that demonstrate that legal aid professionals are indeed able to influence court processes and outcomes for clients (Alschuler 1975; Skolnik 1967; Wice 2005). However, court processes are shaped by many arbitrary conditions and dynamics (Eisenstein, Flemming, and Nardulli 1999), and the ways in which legal aid workers influence them has been undertheorized.

In sum: research has documented a range of practical and political motivations that can drive lawyers to pursue legal aid work, but we know little about what qualifies them to be admitted to offices, and what influences their decisions to stay long term, or not. Studies have emphasized the importance of legal aid workers’ having a strong motivational drive to serve their clients, but we lack an understanding of the types of services they understand they can provide. Scholarship documents that legal aid workers can indeed influence court routines and outcomes, but how they do so requires further analytic clarification. In the following section, I

conceptualize legal aid workers as occupation, profession and fabricators of legal power to elaborate these three dimensions of legal aid work.

Legal aid workers as occupation, profession and fabricators of legal power

Recruiting, admitting and retaining people to legal aid positions

Legal aid can be structured and administered through various organizational means (Alves and González 2017; Bryant and Garth 1978), but its routine provision depends on organizations' ability to recruit and retain people to work in these positions (Wice 2005). According to Hughes (1984), an "occupation" is a set of "activities rather different from those of other people" that are done "in exchange for money, goods," or other benefits (p. 287). In modern capitalist societies, occupations are a key means for people to acquire different sources of power and social advantages (Volti 2012). They not only provide people access to economic resources in exchange for their work, but they can also provide other advantages for people to carry out their interests in everyday life. Indeed, some people may even choose to forego certain economic benefits and instead pursue a position for its other advantages, be it to access other sources of power, or the privilege of time to carry out non-occupational activities throughout their day (Weiss 2005). In order to account for the different advantages and power an occupation can provide, I draw on Bourdieu's (1989) conceptual device of "social space" (1989).

"Social space" provides a useful analytic lens to account for the relative distribution of different sources of power in society "topologically" (Bourdieu 1991: 229). We can think of social space as a geometric space, where people's power and authority can be represented along a two-dimensional plane that accounts for the overall *volume* and *types* of "capital" (power) that different people can accumulate (Bourdieu 1991). At the top of this conceptual space are powerful and dominant groups, who populate different "fields" of specialized sources of power (e.g. economic, political, juridical, cultural, social) (Bourdieu 1993). By contrast, at the bottom, are poor and marginalized segments, who possess little to no capital at all. The relative distance between people's positions on this plane represents people's relative social distance in their access to power and privilege. Importantly, social space is distinct from physical space, though there is often times a correlation between the two. Indeed, differences in people's positions in social space can correspond to differences in their locations in physical space that can further compound inequalities by influencing people's differentiated access to resources (Wacquant 2023). I extend this conceptualization of inequality to work and occupations.

Different occupations offer distinct types and degrees of power and advantage. The greater the perceived advantages of a position the more highly it is sought after. However, people do not have an equal opportunity to successfully pursue the positions that offer the greatest advantages. The more specialized the knowledge or training required to occupy a position, the greater the barriers to entry (Hughes 1984); and occupying such positions therefore also requires possessing the resources needed to successfully compete among rival candidates, which tends to favor people who come from positions of greater social advantage to begin with (Chavez 2020; Laurison and Friedman 2016).

In the case of legal aid, the requirements for entry can vary across time and place, but a crucial pre-condition for entry is that they be recognized as holders of legal expertise. Be it required that such expertise should be achieved and certified through apprenticeship or law school education, for example, access to such training has disproportionately favored people

from more privileged segments of different societies (Parker 1999). Holders of legal expertise are candidates for various types of occupations of significant social advantage and influence—from positions central to the consolidation and administration of modern states, to positions that regulate economic and intimate life at local and global scale (Abel et al. 2022; Abel and Lewis 1996; Dezalay and Garth 2011; Ferguson 2021; Liu 2023; Vogler 2021). Some lawyers may pursue legal aid for strong moral or ideological motives; others may pursue the position for more practical reasons, be it that it offers better work hours or higher pay in comparison to occupational alternatives. In some cases, it may be that they had no other choice (Weiss 2005).

Understanding the motivations that drive lawyers to pursue legal aid offers therefore insight into the benefits they believe they can achieve through the position. However, who ultimately comes to work in legal aid depends on the requirements for entry into the position, and the level of competition over the occupation within the broader market for law graduates. This in turn influences the nature and orientation of legal aid work itself. Indeed, as work is always shaped by the people who occupy a position, and the trajectories and advantages that influence the categories through which they see the world, or, what Bourdieu calls *habitus* (Bourdieu and Wacquant 1992).

The legal aid worker's professional mandate

Among occupations, a specific class of services are characterized as offering esoteric, or “abstract” knowledge (Abbott 1988). That is, they provide a highly specialized source of knowledge, often claimed to be based on a type of “science” (Hughes 1983: 361). In their purest form these positions tend to be classified in a society as “professions” (Abbott 1988; Klegon 1978; Liu 2013). Be it bureaucratic, medical, architectural, or psychological expertise—they offer their knowledge as a resource to *clients*, who seek a professional's expertise for a type of “problem” that they themselves cannot resolve (Hughes 1984, p. 361). Professions are licensed to do things that others cannot and are often authorized to do “dangerous things” (Hughes 1984, p. 289) on the basis of their claim to specialized knowledge and “technique” (Abbott 1988). Medical practitioners are licensed to “cut spaces into bodies and cut bodies into spaces” (Seim 2017); psychiatrists prescribe mind-altering substances (Barnard 2019); financial advisors move and invest people's money. For this reason, professions are generally entered by long years of training, typically prescribed by the profession itself and “sanctioned by the state” (Hughes 1984, p. 332). This training also becomes the basis on which “professionals *profess*” to “know better than others” about specific matters, including the very problems and interests of their clients (ibid: 375).

This long training also serves as the basis of a strong sense of mandate to define the proper conduct and role of their position—in relation to their client, other work colleagues, and society more broadly (Hughes 1983: 288). Written laws and codes of ethics may describe an official mandate, is important to legitimizing and justifying their license. Yet they also come to understand their actual role and “jurisdiction” of action in relation to the division of practical and moral labor of which they are a part (Abbott 1988), and the “horizontal” and “vertical” constraints that organize their labor (Seim 2017), which have implications for their perceptions of “responsibility and power” (Hughes 1984, p. 288).

Legal aid workers are licensed and presumed to possess expertise to counsel economically disadvantaged people who are facing state prosecution or punishment, whose life experiences have typically already been shaped by other disadvantages and marginalization. This

means that their work deals with an indisputably dangerous circumstance for a person who already occupies an extremely disadvantaged position in social space: most immediately, legal aid workers' actions or suggestions can influence what clients and authorities will say or do throughout a court process that decides if and how much punishment they will face—be it a fine, carceral confinement, or execution (Dikötter and Brown 2007; Garland 2010; Kohler-Hausmann 2013;). The outcome of their evaluation by penal court actors also presents further risks for their clients lives and those of their families, even across generations—their physical and psychological health, prospects of employment, their ability to vote, where they can physically be housed, and their debt and obligations to different actors on which they may have come to depend to survive (be they bondsmen, religious groups, or gangs) (Deckard 2024; Manso and Dias 2018; Pager 2008; Thompson 2022).

Written laws and codes of ethics typically define legal aid workers' mandate as one of ensuring poor people's right to "fair trial" or "due process"; while in practice these are unattainable ideals, their claim to legal expertise and technique gives them license to address certain problems for their clients. The mandate they come to ascribe to their role, which in turn orients their motivational drive, is shaped by the people, information and spaces to which they have access from their position within the broader division of court labor at ground level.

Intervening in penal state power

Legal power is an especially crucial resource for modern state authorities to orient and legitimize their exercise of power. Indeed, theories of state power place great emphasis on the importance of the law to modern state bureaucracies. For Weber (1984), written laws, protocols and regulations define the domains and limits of state power, and how it should be wielded. This key distinguishing feature of modern bureaucratic states offers many practical advantages, especially in terms of bureaucracies' ability to more effectively and efficiently carry out a given state objective, and at larger scale. Rational-legal bureaucratic rule can provide rulers crucial cultural power to exercise their capacity in a given domain. The routinized and sanitized language of protocols and processes that align with written laws can more effectively avoid the strong emotions we might otherwise feel in response to how states exercise their power, especially in ways that produce or reinforce inequalities (Pratt 2002; Santos 2022).

The law's capacity to naturalize state administration is especially salient concerning rulers' ability to legitimately exercise coercion. Rulers' ability to routinely exercise legitimized coercion involves their ability to consolidate people or groups as an object of violence (Norton 2014; Smith 2016). They also need to exercise modes of coercion that align with cultural perceptions of acceptable forms of violence (Pratt 2002; Santos 2022; Spierenburg 1984). In turn, exercising a culturally acceptable mode of coercion toward people naturalized as objects of violence can shore up broader political legitimacy from influential segments of the populace (Hathazy and Müller 2016; Reed 2019; Santos 2022; Wacquant 2009).

Aligning penal practices with written legal categories is a fundamental means for modern state rulers to legitimize violence within an existing "cultural infrastructure" (Norton 2014). Written laws define prohibited behaviors and practices as objects of state sanction, as well as the appropriate punitive measures connected to them. While the contents of written law vary across time and place, the logic of its content is one of articulating a rationalized relationship between

an object of state violence and what I call the “just measure of force”; this rationalized articulation is crucial to states’ claim to exercise legitimized coercion.²

State authority is legitimized on the basis of law’s presumed autonomy from outside forces (e.g. Locke 1988; Rousseau 1997). Rather than presuming this autonomy and rationalizing force of the law, however, Bourdieu (1984, 1997) argues that it is precisely this *mis*-recognition that renders the law an especially powerful resource of symbolic power. Conceptualizing law as symbolic power brings to fore its effect of normalizing ideas and practices that operate along lines of social exclusion. The force of legal categories is produced through the illusion (or “miscognition”) that law’s content and form are neutral, universal and autonomous from other forces (Bourdieu 1987; Hathazy and Müller 2016).

Penal courts are state mechanisms composed of legal experts and authorities who evaluate, interpret and (re)classify people targeted by the state’s policing capacity to formalize who is a legally sanctioned object of state violence or not; this process is crucial to producing and maintaining the force of the law and its perceived objectivity through a rationalization of its application. In other words, the people who compose “court communities” (Eisenstein, Flemming, and Nardulli 1999) play a central role in producing and orienting legitimized penal state capacity.

Written penal laws elaborate procedures by which evaluation of people facing state prosecution should be carried out; these procedures compose a division of moral and practical labor of different experts and authorities that perform (in the sense described by Reed 2013) a process of ‘truth-seeking’ about a person’s intentions, behaviors, and proclivities. Yet in practice, penal procedure is a labor process of truth-*making* (borrowing from Foucault 2014), to produce and apply meanings of ‘guilt’ and the ‘just measure of force’ that orient and legitimize state coercion. In other words, as “street-level bureaucrats” court actors wage their power on the basis of them being *enforcers* of the law; yet in practice, they are actually *fabricators* of the very meaning and force of the law, and thus, of state authority itself.

Influencing legal classification entails the work of intervening in what I conceptualize as the law’s “interpretive terrain”—the social space within which court actors wage their authority and expertise to influence how people and circumstances are interpreted and classified in written law. The processes produced through court actors’ practices, struggles and negotiations are shaped by various “arbitrary” factors (Eisenstein, Flemming, and Nardulli 1999)—from their administrative, political, social and economic embeddedness, to resource availability, time, language, racialized logics, interpersonal dynamics among the “courtroom workgroup,” and the subjective perspectives of court actors (Clair 2021; Edelman 1992; Feeley 1979; Gonçalves, Lages and Leocádio 2023; Paik and Harris 2016; Travers and Manso 1997; Ng and He 2017a, 2017b). These dynamics also inflect, to varying degrees, political and cultural ideals projected by institutional actors in the broader global field of power (Dezalay and Garth 2011; Ferguson 2021; Langer 2007). Such factors structure the horizontal and vertical dynamics of the interpretive terrain within which court actors seek to exploit the inherent “elasticity” (Bourdieu 1987) of written law.

Horizontally, various occupational actors and experts navigate the interpretive terrain to compose this process of truth-making (e.g. police, investigators, court summoners, scribes,

² As previous work shows, rationalizing administration contributes to eclipsing interpretations of state violence as arbitrary or personalistic in ways that could otherwise undermine the legitimacy of modern state authority (Pratt 2002; Santos 2022; Weber 1958).

clerks, judicial assistants, prosecutors, judges, defense attorneys, testifying witnesses). Administration is also always influenced by authorities mandated to impose vertical control and constraint on their work (e.g. courts of appeal, internal affairs divisions of prosecutor and defense attorney offices).

The work of intervening in this terrain, then, entails a court actor (1) determining the range of possible classifications about a person and their behavior within these social constraints that could be formally translated into written law; and (2) wielding the sources of power at their disposal to vie for a legal classification that advantages their professional, moral and practical interests. Over time, their strategies contribute to courtroom work routines and the very constraints within which legal classifications are fabricated.

The experience of defense attorneys provides a generative entry-point for grasping the logic of state power (Liu and Halliday 2016). In particular, legal aid workers are fruitful actors to examine because they face an especially arduous task to intervene in court processes that have shown to present several disadvantages for their clients. The professional roles that legal aid workers may play for their clients will vary based on the resources at their disposal; however, their claim to legal expertise and technique always makes them contenders to mitigate the punishment their clients face in court. It is through their strategies within their courtroom's interpretive terrain to do so that they both challenge and naturalize the orientation of penal state power.

Methodology

Public defenders in the Brazilian metropolis

To develop this broader analytic framework, I analyze the legal aid workers who staff public defender offices in urban Brazil. Public defender offices are state offices in Brazil that are enshrined into the country's constitution as the primary source of legal counsel for people who lack the economic means to pay for a private attorney to defend their interests. The Brazilian Constitution stipulates that public defender offices are *the* primary source of legal aid for poor people, and that other sources of legal aid are only supplementary in jurisdictions in which offices have not yet been able to extend their institutional reach (Brazil 1988). Offices provide legal aid services in various areas of law. The types of cases for which they offer legal aid correspond to the different types of courts and case management within both federal and state jurisdictions (Brazil 1988).

The Brazilian legal system is based in a "civil law" tradition in which case decisions depend on the interpretation of written and general rules passed by the legislature, and, in exceptional cases, by the Executive (de Mendonça 2014). Organized according to the 1988 Federal Constitution, the court system operates at both the federal and state levels. Courts are organized into those that administer "specialized justice," and "common justice." Specialized areas include labor, military and electoral courts, and "common justice" justice is comprised of criminal and civil courts. Specialized courts operate at the federal level, while common courts include state-level trial courts and one state-level appellate court; there is also additional appellate recourse to one or two levels through higher federal courts. Many states also possess small claims courts, or "special courts." "Federal justice" courts (*Tribunal da Justiça Federal*) also process cases that involve the federal government, which include a trial level court in each state, regional appellate courts, and two layers of federal appellate courts: the Superior Tribunal

of Justice (STJ) for non-constitutional issues and the Federal Supreme Court (STF) for constitutional issues and extraordinary appeals (Ballard 1999).

Within this overall legal structure, there are distinct public defender offices for federal and state jurisdictions. For penal cases, the overwhelming majority are processed at the state level; I therefore focus on public defenders who staff *state* public defender offices. Each of Brazil's 26 states has a state public defender office that operates in various legal domains—civil, family, military, and penal law. The overall extent of public defender offices' institutional reach within each state may otherwise vary, but offices are nonetheless the primary source of legal aid for penal cases within the metropolitan jurisdictions of all 26 states; these are also the regions with the largest volume of court cases.

Analyzing public defenders who work in Brazil's penal courts is generative for theorizing legal aid for several reasons. First, working as a public defender in Brazil today is among the most highly sought after positions for people who possess a law degree. Previous studies of legal aid in the U.S. have largely focused on public defender offices' obstacles to recruiting and retaining people to such positions long term due to the stigma that enshrouds it (McIntyre 1987; Weiss 2005). In Brazil, there is no such stigma; working as a public defender is a highly pursued position. This offers an opportunity to clarify the conditions that influence who comes to work in legal aid positions in different contexts, or not.

Second, Brazil's public defenders offer a dynamic entry into the division of work that composes the penal process in a Latin American court context. Penal defense workers provide a fruitful vista into understanding the broader penal process (Liu and Halliday 2016) and the organization of practical and moral roles that compose it. People facing state prosecution or punishment in Brazil *must* have a defense attorney to represent them in court (Brazil 1941), either a private attorney or legal aid representative. Within metropolitan jurisdictions, public defender offices provide legal aid to an estimated 70 to 80 percent of people who are facing prosecution or punishment (ANADEP 2017). The attorneys who staff public defender offices therefore play an integral role in Brazilian penal procedures and offer an expansive view of the penal court processes that compose Latin America's largest penal state infrastructure (Fondevila and Berger 2022).

Third, public defenders provide legal aid services to poor people in all three main stages of penal court procedure: (1) pre-indictment, (2) post-indictment (trial), and (3) penal execution (i.e. sentencing progression). Brazil's constitution and other written legislation grant public defenders broad professional license to carry out their work in these three penal stages. Moreover, the organization and structure of the public defender profession itself leads to most people having worked at least to some degree in legal aid in different types of courts, both in terms of working in different types of penal courts at different stages *as well as* in non-penal courts. Rather than representative of other legal aid contexts, I highlight their broad license, domain of influence, and range of experience as a kind of generative case (Flyvbjerg 2006) to clarify the dynamics that influence legal aid workers' perceptions of their professional mandate.

Fourth, public defenders' everyday work practices and strategies to influence court outcomes take place within a context of sweeping ongoing reforms in Brazil's written penal procedures. Like most countries in Latin America, written penal procedure has undergone the most dramatic change in two centuries, described by a transnational network of "legal entrepreneurs" as a transition from inquisitorial penal procedures to an adversarial process of penal management and judgement (Ciocchini 2017; Langer 2007). Yet how these written changes are interpreted and converted into court practices is shaped by the everyday work of the

court actors who interpret them within the constraints of their interpretive terrain. Examining the work of public defenders within this context provides an understanding of the conditions and constraints of court processes within this context of formal procedural change, as well as how public defenders influence the very orientation of penal management and state transformation.

Examining the work practices of public defenders within this context more broadly offers useful comparative perspective. In moments of dramatic change, occupational actors become especially aware and reflective of the conditions and constraints of their work (Kucinkas and Zylan 2023). Given the swiftness of changes in Brazil's penal procedure and institutions, many public defenders have worked in courtrooms over the years with distinct procedural rules, which gives them a fruitful comparative reference for what is unique or not about the conditions of the current courts within which they work, factors that influence their perceived mandate, and court processes and outcomes.

Examining public defenders in two Brazilian cities

Today, the organizational structure of public defender offices as well as the structure of the profession is relatively homogeneous in comparison to most legal aid systems in the world. Offices have their own administrative budget determined by the state governor. Each office is directed by a Public Defender in Chief determined through a two-step process. Three candidates are nominated internally by all public defenders who staff the state office. The top three candidates are then presented to the state governor who nominates one of the three as the Public Defender in Chief for a term of three years. The Public Defender in Chief then nominates their coordinating committee, comprised of public defenders from among the office's ranks to fulfill various administrative positions—from the treasury, to public communication, and research.

Given that the office provides legal aid services in various social domains, there is also a coordinator for each area in which such services are provided: civil, family, military, collective rights, and penal law. These coordinators manage the organization and administration of legal aid in their respective areas for all jurisdictions within the state. The Public Defender in Chief also nominates a director of the public defender office's school—which manages training for incoming public defenders as well as continued training for public defenders as well as for people in other office staff positions.

Each office has coordinators for each of the office's "nuclei." In addition to legal services, national legislation defines these office nuclei as essential to providing more "holistic" support to economically disadvantaged and vulnerable people, including oversight of imprisonment conditions, support for unhoused people, youth support, indigenous peoples' rights, maroon community rights, and support for LGBTQ+ people. All other public defenders who participate in these centers volunteer to do so as an activity supplementary to their primary work, which is to provide legal counsel to their clients.

Except for office leadership and the division and nuclei coordinators, each public defender is assigned to work in a specific court within a designated jurisdiction. Those who work in smaller county jurisdictions often work in courts that manage cases in multiple areas of law. In the smallest of counties, one court may manage all legal domains, and the public defender(s) assigned to that court will similarly work on various types of cases. By contrast, given the significantly higher volume of cases in large metropolitan jurisdictions, the division of court work is much more specialized. Civil, family, military and penal matters are managed by distinct courts. Each public defender is assigned to work within a specific court within a distinct legal

area. Within metropolitan jurisdictions, the number of public defenders assigned to penal courts typically comprise one of the largest portions of public defenders who work in the primary metropolitan jurisdiction of each state.

While the organizational structure of state public defender offices is relatively similar across the country, legal aid services are developed and provided amid locally distinct conditions and contexts. Even when offices are administered according to similar rules, official requirements for entry, and general bureaucratic organization, the people who choose to work in these offices, their role in penal court processes and everyday practices are influenced by local conditions, constraints and dynamics. Given that so little is known or understood about public defenders in Brazil—and legal aid more broadly—I therefore employed a two-site research strategy for this study. This approach allowed me to qualify my findings in each jurisdiction, identify dimensions along which legal aid differs in each, and disclose potential commonalities amid otherwise distinct local constraints.

More specifically, I analyzed public defenders who work in the cities of São Paulo (in São Paulo State) and Salvador (in Bahia State), their motivations for pursuing this occupational position, perceptions of their professional mandate, and their everyday work in penal courts. I strategically selected these sites for several reasons. First, their state public defender offices are important national references for legal aid in the country. The homogeneous administrative structure that defines public defender offices today is relatively new—as of 2007—and the organization of work in the offices of the state of São Paulo as well as the state of Bahia were influential in defining and adopting the structure that is now enshrined in national legislation to guide public defender office administration. The institutional knowledge and expertise of public defenders in these offices have also become important references for other offices in the country, including for their practices in the penal domain. Rather than representative offices, the public defender offices of the states of São Paulo and Bahia are influential “metropolises” (borrowing from Go 2016) within the broader organization of legal aid in Brazil.

My selection of these two sites was informed by six months of preliminary fieldwork I conducted in Brazil between October 2017 and March 2018. During this period, I conducted 12 interviews with key actors in penal policy and legal aid at the national level, including members of the National Secretary of Judicial Reform, National Justice Council, and the National Association of Public Defenders. These interviews served two main informational purposes. First, they allowed me to develop an understanding of the genesis and orientation of recent penal procedure reforms in the country, which was crucial context to analytically situate and understand the significance of public defenders’ legal aid in contemporary Brazil. Second, these interviews clarified the organization, structure and historical evolution of public defender offices, as well as important relational dynamics between different offices across the country.

Through my interviews with members of ANADEP in particular, I learned of the extreme variation in the timing of offices’ inauguration, their infrastructural development and expansion in different states. Since 2007, however, offices have become much more coordinated nationally, in terms of sharing institutional knowledge and expertise both in terms of how to run the offices administratively as well as in terms of developing what offices come to consider “best practices.”

While both state offices are among the most influential in the country, I also strategically selected these sites because they were nonetheless very likely to be characterized by meaningful differences in dimensions of legal aid at the ground level, given differences in local conditions that previous work has shown can influence penal practice and court processes, including administrative capacity of penal state institutions, local legal cultures and the social

demographics of defendants (Eisenstein, Flemming and Nardulli 1999). This approach is not a systematic comparative study in which I selected sites to test certain variables or hypotheses. Rather, given that so little is known or understood about public defenders in Brazil, and legal aid more broadly, I selected these two jurisdictions because their penal processes were likely to vary in important ways that would be useful to identify factors that can shape key dimensions of legal aid.

Mixed-methods

My investigation of public defenders in these two research sites was guided by three lines of inquiry.

- (1) Who works as a public defender in the penal courts of each city, and why? What were their motivations and what was their trajectory to entering the position?
- (2) What do they understand to be their professional mandate? In other words, what is the role of the public defender, and what makes a ‘good’ public defender in their eyes?
- (3) What are the routine tasks and activities that characterize their work? What are the strategies they employ to influence court processes and outcomes for their clients?

To address these questions, I collected multiple sources of data over the course of a total of 36 months of field research in Brazil. This includes the six months of preliminary fieldwork that I conducted between March 2017 and March 2018. In addition to conducting informational interviews with national state authorities to inform my selection of research sites, I also conducted preliminary fieldwork in Salvador during this period. Half of the 12 national leaders I interviewed had lived and worked in São Paulo city, including the President of the National Association of Public Defenders (ANADEP), who prior to his presidency had worked as a public defender in São Paulo, and was one of the office’s inaugurating members with the office’s opening in 2006. This interview, which lasted a total of 3.5 hours, together with interviews from the other four interviewees who had previously occupied influential positions related to São Paulo’s court system solidified that São Paulo would be a generative site to examine legal aid.

During these informational interviews, the public defender office of the state of Bahia was mentioned several times as an institutionally influential office, yet none of them had themselves worked in Bahia at ground level. As part of my fieldwork during this preliminary period, I spent four months in Salvador, Bahia, during which time I interviewed five public defenders, including the coordinator of the penal division of the office and four public defenders assigned to different penal courts. I also conducted preliminary observations of court hearings in all three stages of the penal process, i.e.: pre-trial custody hearings in the pre-indictment stage, post-indictment trial hearings, and penal execution hearings. These interviews and observations solidified the analytic utility of Salvador as my second research site and also informed the development and calibration of my interview and observation research guides for more extended in-depth fieldwork in both cities.

I then conducted an additional 30 months of field research in São Paulo and Salvador between March 2019 and March 2023. Through my preliminary fieldwork together with these additional 30 months, I conducted a total of 141 interviews with influential national bureaucrats

(12), public defenders and public defender office staff (93), as well as other actors who compose the penal process (prosecutors, judges, court office staff, police, prison custodians) (36). Interviews with public defenders were scheduled and semi-structured, lasting between 1.5 and 6 hours, with an average of 2.5 hours.

I also conducted a total of 400 hours of participant observation, shadowing public defenders' daily work routines in the full range of their occupational environments (offices, courtrooms, video conferences, police stations, detention centers, penitentiaries). I supplemented and triangulated this data with

- Case files of observed court hearings
- Audio-visual recordings of observed court hearings (when available)
- Descriptive quantitative data from local and national state agencies

Organization of the dissertation

The remainder of this manuscript is composed of three empirical chapters, followed by a conclusion chapter. In the following chapter, *Becoming a Public Defender* (Chapter 2), I elaborate the profiles, trajectories and motivations of people who work as public defenders in Salvador and São Paulo. I elaborate why law graduates pursue work as a public defender and the various perceived advantages of the position. Today, working as a public defender is one of the most sought-after positions for law graduates. As a result, not all applicants—even those trained from the country's top law schools—are admitted. While law graduates are motivated to pursue this position for several different reasons, I show how the requirements of entry as well as the level of competition over this position influence who ultimately becomes a legal aid worker. New education initiatives have greatly increased access to law degrees for people from less advantaged social positions since democratization; however, possessing the resources to successfully vie over a limited number of spots in public defender offices has largely reserved the position for Brazil's white elites—whose experiences are drastically different from the poverty, violence and racism lived by their clients. On the one hand, the practical advantages of the position have facilitated retention of legal aid workers from top law schools guided by a strong commitment to providing services to socially marginalized people. On the other, they have also attracted people who may be otherwise disinterested in the problems of their clients. However, through my analysis of public defenders' distinct work routines in Salvador and São Paulo, I demonstrate how the *physical* distance/proximity between legal aid workers and clients mediates who chooses to work in these positions long term, and why.

Next, in Chapter 3 (*The Role of the Public Defender*), I examine how public defenders understand their professional mandate in relation to the clients they serve. I elaborate three roles public defenders emphasize in relation to clients: (1) harm reducers; (2) providers of information from which they are systematically denied; and (3) humanizers of clients in eyes of other court authorities who will make crucial decisions about their lives. In both cities, public defender work is organized into three distinct stages; across both cities and all three stages, many public defenders emphasized their role as harm reducers on the basis of the technical legal expertise that characterizes their professional craft. By contrast, emphases on their roles as information bearers

and humanizers varied more widely. Far from reducible to personality or ideology, I show how variation is also shaped by differences between these cities in the resources, interactions and environments that characterize their work in certain stages.

In Chapter 4, (*Public Defenders in Action*), I analyze public defenders' strategies to mitigate punishment for clients facing prosecution for drug trafficking in São Paulo, which accounts for the largest portion of people incarcerated in Brazil's largest metropolis. I dissect three strategies they employ to influence their courtroom's interpretive terrain: instigating doubt, contestation, and negotiation. Public defenders face many shared challenges in their work, yet the same public defender may employ distinct strategies within different courtrooms due to differences in the horizontal and vertical constraints of each courtroom's interpretive terrain. By analyzing why the same public defender employs distinct strategies in different courtrooms, I identify two key dynamics that influence variation in their possibilities for intervention: (1) prosecutors' and judges' relative (dis)trust in the validity of police work and (2) public defenders' perceptions of the likely (mis)alignment between trial judges' interpretations and those of higher courts. I demonstrate how probing legal aid strategies is a useful method to identify, synthesize and compare the conditions that influence court processes and outcomes.

Following these empirical sections, I conclude in Chapter 5 (*Probing Legal Aid: Advancing Studies of Punishment, State Power and Work*) with a summary of my key empirical findings and elaborate an agenda for future inquiry on legal aid. I then discuss the study's broader contributions to scholarship on penalty, state power and work.

II. BECOMING A PUBLIC DEFENDER

Chapter summary. Why do law graduates become legal aid professionals who defend poor people in penal court? Brazil's return to democracy in the 1980s ushered in a new constitution that enshrined the Public Defender Office as the primary resource of legal aid for poor people. Since then, offices have developed and expanded dramatically countrywide. Crucial to this swift process of state-building has been offices' ability to recruit and retain people to work as public defenders. Today, working as a public defender is one of the most sought-after positions for law graduates. In this chapter, I elaborate why law graduates pursue work as a public defender and the various perceived advantages of this occupation. While law graduates are motivated to pursue this occupation for several different reasons, not all applicants—even among those trained in the country's top law schools—are admitted to the position. I show how the requirements of entry as well as level of competition over this position influences who ultimately gains entry into the office. Moreover, through my analysis of public defenders' distinct work routines in Salvador and São Paulo, I demonstrate how the physical distance/proximity between legal aid workers and clients in their everyday routines can mediate who chooses to stay in these positions long term, and why.

Introduction

What motivates legal aid professionals who defend poor people in penal court to pursue this line of work? Understanding law graduates' motivations for pursuing legal aid work is useful to identify the conditions that enable the routine provision of this service (Wice 2005). Their profiles and motivations also offer a window into the skills and worldviews that characterize the position in a given context (Weiss 2005). Research has shown that law graduates may submit their candidacy for legal aid positions for various reasons. Some may be largely driven by "pragmatic" motivations (Weiss 2005); that is, reasons connected to the advantages they perceive such positions can provide for themselves. Others may be largely driven by "political" motivations of various kinds—from "altruistic" and "anti-establishment" motivations, to ideologies critical of the social functions of penal systems and institutions on various grounds (Weiss 2005, p. 8). However, not all candidates interested in such positions are necessarily admitted. In this chapter I demonstrate how the requirements of entry and level of competition over legal aid positions influences who occupies them. Yet, the nature of the position's everyday work routines also influences who chooses to remain in these positions long term, and why.

Public defenders who work in Brazil's penal courts are an ideal case to develop this argument. First, in the following section, I describe the swift expansion of public defender offices across Brazil since the late 20th century. Second, I elaborate the profiles of the people who work as public defenders, and the various perceived advantages of this occupation that have made it one of the most sought-after positions for people with law degrees in Brazil today. Third, even as there has been an increase in access to law school education in Brazilian society overall during this same period, I demonstrate how the resources required to successfully vie over a limited number of positions greatly favors people from the most privileged segments of Brazilian society. Fourth, I elaborate factors that influence why public defenders in Salvador and São

Paulo have chosen to work in penal courts in particular. By dissecting the distinct work routines in each city, I reveal how the *physical* distance/proximity between legal aid workers and clients influences their practical or political motivations to work in penal courts long term or not.

Genesis and expansion of public defender offices in Brazil

In terms of written guarantees and laws, Brazil has historically been among the world's pioneers in its enshrining of people's rights to legal counsel. In the late 19th century, Brazil was among the first countries in the world to enshrine into written law a person's right to legal counsel (Messitte 1968). This moment of defining and consolidating the country's first Republic ushered in the writing of a constitution and legislation that included the guarantee of the right to legal counsel, driven by the coinciding of multiple interests—from local Brazilian elites enamored with ideals of individual liberties emanating from France at the time; to abolitionists concerned with guaranteeing legal protections for the masses of Afro-diasporic and Indigenous peoples to be formally liberated from enslavement during this same period (Alves 2006; Rocha 2004).³

In the first half of the 20th century, Brazilian laws were among the first world-wide to define the provision of access to legal counsel as an obligation of the *State*. Amid growing transnational movements of legal experts and reformers between the 1940s and 1960s advancing ideals of “access to justice,” Brazilian law was spotlighted as a world reference and exceptional in terms of the breadth of legal assistance that written laws guaranteed as an explicit right for economically disadvantaged and socially marginalized people (Capelletti and Garth 1978). As early as the 1940s, Brazilian legislation guaranteed access to legal counsel for poor people in numerous domains of social life—from civil and family, to labor regulations, and penal administration (Alves and González 2017). By contrast, for example, in the United States, state guarantees of legal counsel for the poor was—and continues to be—restricted to the penal domain, and much more restricted in scope even within this particular realm of state administration. Neither the U.S. Constitution or case law recognizes this right for civil cases; and, even within the penal domain, legal aid rights are restricted to people who are facing prosecution in cases for offenses with a possibility of punishment by imprisonment (Messitte 2001, p. 2).

Since the emergence of Brazil's first laws guaranteeing such rights, legal aid for the poor has been provided by an archipelago of different legal experts and occupational actors—from *dative* or *ad hoc* private attorneys, to university law interns, and staff attorneys directly employed by state offices. The offices and organizational models by which state authorities provide legal aid have varied across different jurisdictions and over time (Nunes 2020). Indeed, there has been significant variation even among the types of legal professionals directly employed by the state mandated to provide legal aid services to the poor—from state procurator offices (*Procuradoria*), to public prosecutor offices (*Ministério Público*), secretaries of justice (*Secretaria da Justiça*), penitentiary management offices (*Administração Penitenciária*), and public defender offices (*Defensoria Pública*) (Moreira 2016). Throughout most of the 20th century, state bureaucracies directly provided some form of legal aid services to the poor in regions across the country; yet their infrastructural reach was overall limited. Instead, the

³ In 1888 Brazil became the last country in the western hemisphere to formally abolish slavery (Nascimento 2016).

majority of poor people received legal aid through private attorneys managed by local chapters of the Brazilian Bar Association, and who were remunerated by the coffers of state courts for their *dative* or *ad hoc* services (Alves 2006). However, since the late 20th century, Brazil has undergone a dramatic transformation in the organizational means by which legal aid services are provided to poor and socially vulnerable people.

Following 21 years of dictatorship (1964-1985), Brazil's return to electoral democracy in the 1980s ushered in a new 1988 Constitution that for the first time in the country's history enshrined a *specific* office mandated to provide legal aid: the Public Defender's Office. Rio de Janeiro's public defender office was the first to emerge in the country decades earlier, in 1954, and became influential in consolidating an institutional identity early on, including through spearheading the creation of the National Federation of Public Defenders (Rocha 2004). Amid the drafting of Brazil's 1988 Constitution, aggressive lobbying by Rio de Janeiro's public defender office and the National Federation, as well as the professional interests of other state offices yielded this new constitutional enshrinement of the Public Defender Office as an "indispensable organ of state power" and *the* primary resource of legal counsel for the poor (Nunes 2020).

This "Public Defender Office" described in the Brazilian Constitution, however, was a state institution that had yet to come into being. At the time of the drafting of the 1988 Constitution, offices of people who called themselves "public defenders" existed in just nine Brazilian states. These offices shared little in common beyond a common name—from the sources of their budget to their position within local state bureaucracies—and overall served as one among many sources of legal aid within their local jurisdictions. And yet, by 2017, public defender offices had developed and expanded in each of Brazil's 26 states as well as the Federal District of Brasilia (ANADEF 2021; Moreira 2016, p. 2).

Public defender offices operate at both federal and state levels of administration across the country. Today, their expanded institutional infrastructure has in practice rendered them the primary source of legal counsel for poor people in the metropolitan districts of every state, with their institutional reach also increasingly extending to districts even beyond. Development and expansion of public defender offices throughout Brazil has overall taken place quite swiftly over the past three decades. The timing of such processes has nonetheless varied at the local level. In some states, adoption took place relatively earlier, by some time within the 1990s. Development in these regions generally took place in contexts in which there had previously already existed some state mode of providing legal aid; consolidating a public defender office in many of these cases faced little resistance from other local actors and migrating legal aid to such an office offered greater occupational protections and prestige (even while otherwise varying in terms of dominant political parties and economic context) (Moreira 2016). In Bahia, the first state institution that provided legal aid to poor people originated in 1975, the *Coordenação de Assistência Jurídica* (CAJ), provided by a division within the office for Penitentiary Administration; and it was among the first states in the 1980s to develop a public defender office through which such services have since been provided in penal, civil and family areas of law (DPE-BA 2019, p. 15).

In other cases, however, local state offices that previously provided legal aid to poor people in a particular state more strongly resisted relinquishing the function of legal aid to a new state institution. Moreover, some states also faced resistance by local bar associations, typically in states where *dative* and *ad hoc* modes of legal aid provided an important source of income for a significant segment of private attorneys. The state of São Paulo, for example, faced resistance

from *both* the local state bar association as well as the *Procuradoria Geral do Estado* (the state procurator's office), a division of which had for decades been the primary source of legal aid for poor people within the state capital of São Paulo (Lauris 2009). As a result, the Public Defender Office of the State of São Paulo was inaugurated much later, in 2006. This transition was instigated by a segment of state procurators themselves who criticized the “lack of institutional autonomy” of the procurator's office as an obstacle both to their professional development as well as the quality of legal aid itself (Moreira 2016, p. 21).

Prior to democratization, existing public defender offices had little in common with one another, beyond their institutional name as a “Public Defender Office”; local offices relied on the budgets of different state institutions, oftentimes with conflicting institutional interests. Since then, legislative reforms facilitated a process of increasing autonomization of the public defender's office from other state institutions, with offices today possessing their own institutional budget, and legislation describing a relatively homogenized administrative structure, process for gaining entry into the office as a public defender, as well as the progression of the public defender career (Alves 2006; Moreira 2017).

Economic capital and political will were important preconditions for the development and expansion of public defender offices over such a swift period. However, like any process of administrative expansion (Reed 2019; Weber 2013), this dramatic expansion in legal aid capacity also depended on offices' ability to recruit and retain people with relevant expertise to work as public defenders. As I demonstrate in this chapter, not only are public defender offices today able to recruit a sufficient number of people to sustain and continuously expand legal aid's institutional reach, but there is actually a dramatic *surplus* of candidates relative to available positions.

Offices provide legal aid services in various domains—from youth and family law, to military law, and Indigenous and maroon community rights. Yet the penal domain is among the central areas in which public defenders provide legal aid to poor people; those who work in penal courts compose the largest portion of public defender positions in metropolitan districts and consideration of demand for services in penal matters is among the central forces orienting offices' priorities in their institutional expansion to additional jurisdictions (DPE-BA 2022; Ministério da Justiça 2009).

Drawing on the experiences of public defenders who work in Salvador and São Paulo, I describe in the following section the perceived advantages that have shaped who and why so many law graduates have chosen to pursue this position in Brazil.

Motivations to work as a public defender

In modern societies, achieving a law degree places people in contention for numerous occupations distinct from other people. Possessing a law degree has been an important requirement of entry into positions of great social, economic and political influence in many contexts world-wide (Abel and Lewis 1996; Abel, Sommerlad, Hammerslav, and Schultz 2022). In Brazil, people recognized as “legal experts” have long held various influential positions of power (Schwarcz and Heloisa 2015); more recently, over the past three decades, positions for which law graduates are uniquely qualified have significantly diversified in various domains.

Brazil's strengthening ties to transnational commerce and the global market economy have spurred the growth of international legal associations and a greater presence of corporate law firms (Gabbay, Ramos and Sica 2018; Gómez and Pérez-Perdomo 2018). Within the state,

having a bachelor of law degree is also a requirement for entering many positions of authority within Brazilian state bureaucracies (Falcão 1988; Bonelli and Fortes 2020). Since the country's return to democracy in the 1980s, professionalization and rationalization of previously existing occupations led to the bachelor of law degree being a new requirement for positions that did not previously require it—for example, civil police investigators are now required to have a bachelor of law degree (Veiga and Merlo 2014). Over this same period, the infrastructural power of state institutions also dramatically expanded (Bonelli and Fortes 2020; Halliday and Karpik 1997). Growing state capacities to manage and process people through courts demanded greater numbers of people with legal expertise, especially for positions within the judiciary, procurator offices (state attorney), public prosecutor offices, and public defender offices.

In contrast to the former three offices, which have been an integral part of the Brazilian state since the country's inception, expansion of the infrastructural capacity of public defender offices also marked the consolidation of legal aid as a more robust and routine component of Brazilian state power (Gidi and Zaneti 2015). Between 2003 and 2021 alone, the number of public defenders providing legal aid at the state level more than doubled from 3,190 to 6,861 staff attorneys in Brazil (Ministério da Justiça 2021, p. 53). Although the institutional capacity and degree of expansion indeed varies between different states, public defenders provide legal aid to people in over 44 percent of all county jurisdictions country-wide, including the primary metropolitan—and most populated—jurisdictions of each state (*ibid*, p.3).

Among public defenders in Brazil, 51 percent are women, 49 percent are men, and the largest portion of staff attorneys are between the ages of 31 and 40 years old (48.4 percent). A significantly greater percentage of public defenders identify as white (74 percent) in contrast to the Brazilian population overall (42.7 percent) (*ibid*, p. 57), and in even starker contrast to people subjected to the most coercive mechanism of penal state power: incarceration. Just 28 percent of people incarcerated in Brazil identify as white, in contrast to those who identify as *preto* (black) (15 percent) or *pardo* (brown, or mixed race) (47 percent) (SENAPPEN 2024, p.12, 86). See tables 2 and 3 below for more detailed quantitative description of public defender profiles nationally, as well as in São Paulo and Bahia State.

Table 1. Public defender population total, gender and age (Brazil, Bahia and São Paulo)

	Brazil	Bahia State	São Paulo State
total public defenders	6,861	376	770
	Brazil (%)	Bahia State (%)	São Paulo State (%)
gender			
women	51.0	58.0	53.0
men	49.0	42.0	48.0
age			
21-30	6.9	16.5	3.7
31-40	48.4	51.5	72.5
41-50	29.7	21.4	18.3
51-60	9.3	4.9	5.5
more than 60	5.5	5.8	0.0
preferred not to respond	0.3	0.0	0.0

Source: Data compiled from Ministério da Justiça 2021.

Table 2. Race of public defenders vs general population (Brazil, Bahia, São Paulo)

Brazil		
race	population (%)	public defenders (%)
branco	42.7	74.0
pardo	47.2	19.3
preto	9.2	3.0
amarelo, indígena, non- declared	0.9	3.7
Bahia State		
	population (%)	public defenders (%)
branco	17.9	62.1
pardo	58.5	27.2
preto	22.5	7.8
amarelo, indígena, non- declared	1.1	2.9
São Paulo State		
	population (%)	public defenders (%)
branco	58.6	87.1
pardo	31.8	9.2
preto	8.0	1.0
amarelo, indígena, non- declared	1.6	2.7

Source: Data compiled from Ministério da Justiça 2021.

Most public defenders in Brazil are graduates of the country's top law schools. There is no one defining motivation that drives law graduates in any context to pursue legal aid positions in a given context (Weiss 2005).⁴ However, there are several practical advantages to working as a public defender within the Brazilian context that have driven law graduates from the country's

⁴ Despite analyses of legal aid professionals' motivations being scant, existing studies, which have analyzed public defenders in the United States, already document a wide range of motivations that can drive people to pursue such work (e.g. McIntyre 1987; Wice 2005). Weiss's (2005) inductive analysis of public defenders in three different (anonymized) offices in the United States is the most comprehensive study to date on public defender motivations, demonstrating a range of "pragmatic" and "political" motivations that drive law graduates to pursue legal aid work.

top law schools to work in this position, despite these graduates being strong contenders for various positions in the country's broader market for legal professionals.

Over the past three decades, people with law degrees have become increasingly attracted to the public defender salary. In the early years of institutional development, public defenders earned relatively low salaries, in comparison to other positions in public service as well as private attorneys. However, growing valuation and authority of the public defender office has also corresponded to an increase in the starting salary of public defenders (Bonelli and Fortes 2020, p. 400), with public defenders coming to earn much more than most Brazilians; in 2015, the average starting salary of a public defender nationally was \$17,400 reais (\$5,307 USD) per month. Earning 22 times the minimum monthly wage that same year (Ministério da Justiça 2021), this *starting* salary alone ranked public defenders within the top 3.2 percent of earners in all of Brazil (IPEA 2016). They also earn a higher salary than the majority of private attorneys, with their average salary nearly four times the average salary of private attorneys; only the average salary of a *partner* in a top law firm reaching the same average level of compensation (Centro Universitário Tiradentes 2023).

Like other positions in public service, working as a public defender also provides occupational stability. Following an initial probationary period, people who work in public service are granted the otherwise rare privilege of a guaranteed position for the rest of their lives. It is extremely difficult to be removed from such positions. In addition to 39 percent of people working in the informal labor market in 2023 with absolutely no occupational protections (Amorim 2023), virtually no occupation is guaranteed the level of tenured security granted to a public servant of this stature, who may be fired in only rare circumstances.

Public defenders who started working in the public defender offices of Bahia and Salvador in the earlier years of each office's development placed especially strong emphasis on this security. Indeed, in the early years of each office, public defender salaries were lower than many occupational alternatives in the market for people with law degrees. Some had chosen to work as a public defender despite alternatives in the private sector that would have yielded greater immediate financial pay-off in comparison to a public defender's starting salary. For these candidates, considerations were manifested in relation to financial reliability and consistency. For example:

At that time [in the early 2000s] private advocacy was living its boom. People wanted to start a job in private law and start earning money right away. I never had that desire. What I always wanted was stability, tranquility. I didn't want to be rich, I wanted to be able to organize my life so that it could be normal. I don't dream of traveling the whole world. I want to know that on the 30th of every month my bills are going to be paid, and then, yes, I can make plans to travel, to make a purchase, to buy a house. I'm very calm, very pragmatic with money. I'm very organized so all I really wanted was that organization. In private advocacy, you might earn 20 thousand reais one day, and then go two months without earning one single cent. Or three, four, five months. I wouldn't have had any stability with that.⁵

This public defender further reflected that at the time of his entry into the public defender office, he earned a salary of approximately 2,300 reais per month, significantly less than what he

⁵ Interview, Public Defender 15, Bahia, July 2020.

believed would have initially been possible in the private sector. The increased salary of public defender work over time has attracted many people who graduated from the country's most prestigious law schools, and who are viable candidates for other high-paying positions, including in high-paying private law firms. What distinguishes public service for them too, however, is the position's stability. Public defenders often contrasted the stability of their work in public service to that of working in a high-paying corporate law firm. Since the early 2000s, corporate law firms have expanded in Brazil, concentrating in the city of São Paulo in particular (Gabbay, Ramos and Sicca 2018). Despite composing a relatively small portion of the legal market overall, most public defenders were trained in top law schools and recognized corporate law as an occupational alternative that would be within their reach. However, public service offered unrivaled occupational security relative to such positions.

The prestige and authority of being a public servant⁶ also grants public defenders a type of security and reliability of workflow *within* their work environments:

I always loved penal law in particular. It's a very fascinating area, but private law in this area, well, I don't have any patience to have to flatter people to get things done. [...] To have to "kiss up" to a civil police *delegado* that happens to not like working and so decides to make me wait five hours to release my client. Just to provoke me. That's crazy. [...] And that's criminal law in Bahia. You have to have the stomach for it, to know there's no set day or hour. I have a good friend who's a criminal defense attorney and he says "man, there are days when you're on the beach playing with your son, and all of the sudden you have to go. Sometimes you get a phone call at midnight, and you have to go." The public defender office gave me something fantastic: I am able to exercise my very best as a person which is my intellectual capability, legal practice in its most proper form without wasting my time having to kiss up to people. Why? Well, if the *delegado* doesn't do his job, I submit an *oficio*. [...] I have free passage in the court registry office. It's one of our prerogatives [as public defenders]. I walk into the court registry's office in the courthouse, pass by the judge: "Good morning, how's it going? I'm here to discuss something with you...." That necessary submission of private attorneys is something that's always bothered me. It's not that people shouldn't be humble; everyone needs to have humility. But the problem is this inversion of values that makes it so the attorney has to act as if they are asking for a *favor* when really, they are just exercising their function. In Bahia its very distorted.⁷

High salaries, occupational stability and prestige taken individually are already each privileges that most Brazilians are never able to obtain through their work. The growing convergence of these advantages over time has made the public defender a position of

⁶ In Weiss's (2005) study, some U.S. public defenders also emphasized the lifestyle advantages of working in public service; similar to law graduates in Brazil who chose to forego work in the private sector in the early stages of office development, some interviewees in Weiss's study also chose to forego higher paying positions, preferring instead a "set salary," "attractive benefits package," and "work schedule" (p. 82). Different from the public defenders in Weiss's study, however, public defenders in Brazil also reap the added benefits of the high *prestige* attributed to positions of public service within this cultural context.

⁷ Interview, Public Defender 12, Bahia, June 2020.

exceptionally high social advantage. Similar advantages are also experienced by other powerful positions in public service, namely: procurators, public prosecutors and judges. Like the public defender, these positions offer exceptionally high pay relative to most other positions in public service, and also the majority of legal professions overall. Indeed, many public defenders described these positions composing a sort of distinct “class” in Brazilian society.

The salary gap between public defenders and these other occupations has significantly decreased over time; the salaries of the latter are still higher, however (Ministério da Justiça 2021). While being a public defender is of great prestige, many public defenders recognized that being a judge or prosecutor is a position of even greater authority and unquestionable power both within the courts and Brazilian society more broadly:

It’s not that being a public defender isn’t prestigious; that would be a gravely inaccurate thing to say. All I’m saying is that being a judge or public prosecutor, well, they are just unquestionably positions of power. When I first told my parents I had passed the public service exam to be a public defender, they were happy for me, but assumed this was a short term plan until I would become a judge some day.⁸

Given these advantages, some public defenders had taken public service exams to work in some of these institutions as well. In these instances, their initial entry into the public defender position was the result of having passed the public service exam for the public defender office first—which is no easy feat for any of these positions. By contrast, for others working as a public defender was their top choice from the start. While judges and prosecutors might have even better pay and greater prestige, working as a public defender also has its distinct practical advantages,⁹ by the nature of composing a relatively new state office in comparison to these other public service positions. For example:

Throughout law school, I knew I wanted to work in public service. I think it’s more my personality, and also a question of having a stable job. At the time, I wanted to be a prosecutor. But working as a prosecutor requires that you first have three years of experience practicing law. This is true for public defenders too today, but at the time it wasn’t. I wasn’t about to spend three years without a stable job so I chose to apply to the public defender office as my first step after law school.¹⁰

The fact that public defender offices are relatively new institutions in comparison to these other offices also translates into advantages geographically for many candidates. As long-established state institutions, the judiciary and public prosecutor offices have established their

⁸ Interview, Public Defender 31, São Paulo, November 2019.

⁹ Weiss (2005) defines the practical motivations of public defenders in his study as those which are “inherently apolitical” and concern advantages that are likely to drive “both prosecutors *and* public defenders” (p. 8). In Brazil, there are indeed many practical advantages that public defenders share with prosecutors and judges; however, I also highlight here how working as a public defender offers some practical advantages that are different from these other positions due to the notably distinct political trajectory of public defender offices that has influenced the pragmatic features of defender career trajectories relative to these other public service positions.

¹⁰ Interview, Public Defender 22, São Paulo, November 2019.

infrastructural presence in every county jurisdiction. This distribution of institutional power corresponds to a standardized career trajectory for prosecutors and judges in which they are assigned to first start working in smaller county jurisdictions at the beginning of their career in the state's "interior"; over time, they progressively move to work in court within larger counties (CNJ 2016). For people with a strong desire to live and work in urban regions, then, public defender positions offer a notable advantage. The number of public defenders has indeed grown substantially in recent decades; between 2003 and 2021 alone, the number of public defenders more than doubled across the country. Yet there are still significantly fewer public defenders in comparison to the number of prosecutors and judges—there are double the number of public prosecutors and three times the number of judges (Ministério da Justiça 2021, p. 53-55). Public defender offices therefore prioritize legal aid assignments in more densely populated counties. More than half of public defenders who work in Bahia and São Paulo work within the capital city of each state (DPE-SP 2021; DPE-SP 2022). As a result, for those with a strong preference to live in an urban region, working as a public defender significantly increased this possibility earlier on in their careers in comparison to working in these other prestigious and high-paying positions in public service.

In addition to pragmatic motivations, many public defenders also emphasized political motivations that drove them to pursue work in the office. These people often described their long-standing interest to be in a line of work that served economically disadvantaged people. Working as a public defender offered them a means of doing so without otherwise undermining their financial and stability of employment:

I initially wanted to be a journalist, wanted to work for the newspaper and write news columns with a focus on writing social critiques. I read a lot of newspapers and wanted to do something to help poor people. My mom emphasized that I wouldn't make any money as a journalist and pushed me to go to law school instead. I was especially interested in criminal law and human rights in law school. I was committed even back then to serving oppressed people. Drauzio Varella's book on Carandiru Prison impacted me a lot in terms of my interest in the topic of incarceration and the horrible prison conditions in Brazil. That made me especially indignant. Working in the public defender office was a way for me to pursue this mission.¹¹

At first, I was working in a private law office when it was announced that there would be the first public service exam for the public defender office of the State of Bahia. One of the head attorneys in the office said to me, "Listen, you really need to take that exam." Because I really wanted to work for those who can't pay [for legal counsel]. I always wanted to do that, and I always said that to him while I worked in that office.¹²

Public defender positions in Brazilian society therefore provide several advantages within the broader organization of work. In fact, these many advantages have contributed to the process of becoming a public defender being an increasingly competitive endeavor over time. Public defenders' ability to successfully enter offices in the states of Bahia and São Paulo depended on their ability compete for a limited number of positions amid a growing surplus of candidates for

¹¹ Interview, Public Defender 17, São Paulo, September 2019.

¹² Interview, Public Defender 24, São Paulo, October 2019.

such positions. In 2018, over 8,000 law graduates took the public service exam to vie over just 50 new openings in the public defender office of São Paulo State (DPE-SP 2021). In 2021, more than 6,600 applicants vied for 18 new positions in the public defender office of Bahia (DPE-BA 2021).

Competing to become a public defender

As an occupation that provides a service based on “abstract” knowledge (Abbott 1988), i.e. legal expertise, working as a public defender requires that a person possess certain types of training and certifications. There are three main requirements to gain entry into this position. First, they must have a bachelor of law degree achieved through five years of post-secondary education at an accredited university. Second, they must have certified proof that they passed a professional exam distributed by the Brazilian Bar Association that authorizes them to “practice” law; that is, it grants them license to offer their legal expertise to clients, be it through a position in public service or through a private law firm. Third, those who are interested to work in a position of public service, such as a public defender, must pass a public service exam specific to that position.

The public service exam is a distinguishing condition of entry in comparison to people’s pursuit of jobs in private law firms. Public defenders routinely emphasized the importance of social capital for people to successfully find work in a private law firm. This difference in the conditions of entry—and the advantages of the conditions of entry into public service—was especially emphasized by public defenders who described themselves as growing up in “lower middle class” families. For example:

I had a very strong desire to be a public servant, to take a public service exam, because I also wanted to achieve things by merit. I had a hard time back then because there was a lot of that, you know, what we used to call “pistolão”—a type of system of personal recommendation. You’d get a job if you were recommended by someone you know. By “someone.” I saw that growing professionally would really depend on those kinds of social connections. In the public service I saw instead a space where I could build things up on my own merit.¹³

There is a widespread belief in Brazilian society that a law degree will yield greater likelihood of occupational stability and success (Boneli and Fortes 2020). Indeed, among public defenders who described their upbringings as being more “humble” or “simple,” their pursuit of law school was greatly rooted in this belief in the law degree as a means to increasing their future social advantages, as well as those of their family:

Honestly, at the time when I was applying to university, my oldest sister told me she’d be able to find me a job if I got a law degree [laughs]. I wanted a job—I needed a job—and my sister told me “if you want a job quickly, study law.”¹⁴

¹³ Interview, Public Defender 13, Bahia, October 2020.

¹⁴ Interview, Public Defender 14, Bahia, October 2020.

Possessing a law degree in Brazil has long been a marker of privilege and power, making a person eligible for a number of career trajectories and positions of influence (Falcão 1988; Schwarcz 1993). For people such as the public defenders above, pursuing a law degree did indeed yield a dramatic increase in social privilege for them and their families. However, law graduates must compete for jobs within a hypercompetitive market for people with law degrees. More people than ever before have gained access to achieving a law degree in Brazil. Over the past three decades there has been an unprecedented boom in the number of people with bachelor of law degrees. In 2014, there were more than 1,240 law schools in the country, more than the “rest of the world combined” (Garcia-Navarro and Moura 2014). As of 2022, 1.3 million people with bachelor of law degrees regularly practice law, and Brazil has a higher proportion of people practicing law relative to its overall population than any other country in the world: there is approximately one person practicing law for every 164 inhabitants (OAB 2022).¹⁵

Democratization in Brazil coincided with processes of state-building and reform in education that have had sweeping impact on people’s access to all levels of education, including at the university level. This expansion was especially dramatic in the early 2000s with the election of President Luiz Inácio Lula da Silva. This moment ushered in growth in available seats in existing universities as well as growth in the number of universities overall. The number of university students has increased in every disciplinary area; however, the number of law schools and law students has nonetheless outpaced all other areas (Bonelli and Fortes 2020). Increased access to law degrees has significantly increased access to law degrees for people from more economically disadvantaged segments of society, who have historically been excluded from a certification that has long granted much power and privilege in Brazil. An unprecedented number of people who identify as *preto* or *pardo* have also achieved law degrees since the enactment of these new educational policies. And yet, people who come from less socially advantaged positions are overall a small minority among the ranks of public defenders. Indeed, 29.6 % of public defenders in Brazil reported growing up in families earning 4-10 times the minimum wage; 27.5% grew up in families earning 10-20 times the minimum wage; and 26.4% from families earning *more than* 20 times the minimum wage in Brazil (ANADEP 2021, p. 62).

If on the one hand positions of public service can be attractive to candidates who lack the social capital to be successful in the private legal market; on the other, the factors that increase people’s chances of successfully passing the public service exam greatly favor people who come from more advantaged families. First and foremost, scoring well on the public service exam requires exceptional formal legal training. In both São Paulo and Salvador, nearly every person received their law degree from a top law school. Going to *a* law school has become much more accessible overall, but the quality of legal education is highly stratified. There is very little control and regulation of legal education in Brazil, which has resulted in an extreme inequality in the prestige and substantive training among different law schools (Bonelli and Fortes 2020; OAB 2022).

Passing the Brazilian bar exam is no easy feat for many applicants. Of all of the people who took the bar exam after law school in order to practice law, 56 percent actually passed the exam—40 percent of those who passed did so on their first try, while the other 75 percent passed on their second or third try (FGV Projetos 2016). 19 out of the 20 schools with the highest pass

¹⁵ The total number of practicing lawyers in Brazil is surpassed by that of India; however, the proportion of lawyers in India relative to its overall population is significantly less (1 practicing lawyer per every 700 inhabitants) (OAB 2022).

rates were public universities (Bonelli and Fortes 2020, p. 396), which, barring a few exceptions, are the most prestigious law schools in the country. 52.5 percent of all public defenders in Brazil received their law degrees from public universities (ANADEP 2021, p. 62). Admissions into a top law school greatly favors people who went to private schools for their primary and secondary education before university, however.

All interviewed public defenders in Salvador and São Paulo reported having obtained at least some of their primary and secondary education in private school, with the majority obtaining their entire education until university in private school. Nearly all interviewed public defenders who did not come from more economically privileged families were often graduates of public universities, given that public universities offer free tuition to all students. However, the high prestige of public universities means that admissions are extremely competitive—generally even more competitive than getting into an accredited private school (barring a few exceptions). Admission to public universities overall favors people from elite classes who are well-positioned to compete for limited seats. In other words: those who have the exceptional economic privilege to be trained in private schools prior to university are in turn granted the further advantage of not having to pay for degrees in higher education at public institutions that increase their chances of gaining entry into more privileged occupational positions afterward. By contrast, those who lack the economic and social privilege of accessing private education before university must in turn *pay* to achieve their law degree and are not necessarily guaranteed occupational stability after such a significant financial investment.

During my interviews with public defenders, their experience of having taken the bar exam was but a fleeting memory. In most interviews, the bar exam was not even mentioned until I explicitly asked them about their experience taking it, and responses often lasted all but 30 seconds to explain this moment in their professional trajectory. However, even for those who attended top law schools, earning a position in the public defender office was nonetheless far from a guarantee. In contrast to the minimal significance public defenders attributed to having taken the bar exam, they provided much elaboration on their experience of taking and passing the public service exam to join the public defender office. Indeed, for most, passing a public service exam was described as a decisive and particularly emotional moment in their lives.

Each public service exam, or *concurso*, consists of three consecutive phases that take place over the course of several months. Moving on to each consecutive stage depends on a candidate's performance in the preceding phase; they not only need to score sufficiently high enough to "pass" according to certain standardized measures set by the office distributing the exam, but also how their score ranks relative to thousands of other applicants from across the country vying for a limited number of positions. Different from the bar exam, a *concurso* does not take place regularly. Rather, it coincides with available job openings in a particular state office, which depends on a variety of factors, from available institutional budget and offices' administrative priorities, the size of the client population they serve, and the number of counties or types of law to which an office seeks to expand its administrative reach. When an office seeks people to occupy new positions, it releases a *chamada para concurso*, or a "call" for people to take the public service exam. Passing a public defender public service exam the first time has become increasingly unlikely over the past three decades. Among the total population public defenders in Brazil as of 2021, only 8 percent of people were granted entry into a public defender office on their first try taking a public service exam. By contrast: 30 percent passed only after taking 1-3 exams, 27 percent had taken 4-6 exams, 21 percent had previously taken 7-10 exams, and over 12 percent passed after taking over 10 exams (ANADEP 2021, p. 64).

People strategize to increase their chances of entry by vying for multiple available positions. On one end, among people who were especially driven since early on to work as a public defender in particular, they often times described having taken public service exams for multiple public defender offices across the country. On the other end, those who were committed to living in a particular geographic region often took public service exams for multiple offices within their region of choice, from the public defender office, to the public prosecutor office, judiciary and *procuradorias* (state attorney offices). As one public defender in Bahia said: “you don’t take a public service exam in order to pass, you take it *until* you pass.”¹⁶

Succeeding in this hypercompetitive market for public defender positions requires not only strong training from a top law school, however. It also requires the time and resources to learn and refine their knowledge and familiarity with the particular nature of each office’s exam and the skills required to master it. Many people therefore paid to take extra prep courses, also called “cursinhos.” The process of taking multiple exams itself becomes part of the process of accumulating the knowledge and familiarity with the nature of such exams to score well on them. For example:

At one point I took a public service exam to be a judge in São Paulo. Not to pass it, but to train. The first exam I ever took was for a federal public defender office, but my skills were really weak. So when a judges’ *concurso* showed up soon after, I took it just to practice.¹⁷

Studying and taking several multi-stage public service exams therefore becomes an all-encompassing full-time task. For those who were lucky, this process took several months, but for most, this process took multiple years. Taking extra courses and having the time to study and travel country-wide to take different exams therefore greatly favors people who have the financial stability and support for this undertaking.

Importantly, candidates compete for multiple positions not only to increase their likelihood of scoring sufficiently well on an exam, but also to increase the likelihood of entering a position for which they have passed as soon as possible. The time it takes to enter a position of public service even for competitive candidates depends not only on how quickly they can be one of the top scorers on a particular *concurso*, but also on the time it may take to be “called” by that office to enter their position of public service once they rank among the chosen few. Despite a public defender office having submitted a *chamada de concurso* for a certain number of legal aid positions, offices do not typically admit all winning applicants at the same time. Rather, it depends on the availability of anticipated funds and a person’s exam ranking. All applicants who passed the public service exam are ranked based on their score relative to other winning candidates. The higher their ranking, the sooner they will be called to enter the position. Nonetheless, the time between passing a public service exam and entering the office itself can vary widely. In a minority of cases, after finally passing the *concurso*, a person was called to enter the position just a few months later; for many others, however, being called to enter an office after passing could take years, even for top testers:

¹⁶ Interview, Public Defender 21, Bahia, August 2020.

¹⁷ Interview, Public Defender 23, São Paulo, December 2019.

I took *concursos* for public defender offices throughout the whole country. I mean, my first position was actually in the public defender office of Maranhão. I had also passed the exam for the *defensoria* in the states of Goiás, Matto Gross do Sul, Maranhão, and São Paulo. I had even started taking the exam for Rio Grande do Norte and was invited to take the final stage of the exam, but decided not to go forward with it. I had already been “called” to enter the office in Maranhão and I thought, *chega*, that’s enough. Because there’s that: You pass an exam but aren’t called right away, right? I’m sure you’ve already heard about this. So, Goiás for example, that was the first concurso I took. It was also the first exam I passed, but I was only called to join the office last year [six years later].¹⁸

The training, time and financial support required to successfully enter a public defender office, then, greatly favors people from the country’s most privileged classes.

Choosing to defend people in penal court

Given the extreme investment involved in gaining entry into these public defender offices, most public defenders choose to stay long term (DPE-BA 2022; DPE-SP 2019). The financial benefits and stability of the position are nearly unrivaled. Among the few people who left the office, public defenders recalled these colleagues having been people who instead felt a strong “calling” to work in another position: “I remember one of the members of my cohort kept taking *concursos* that first year until he was accepted to be a judge; but overall this is pretty rare. It’s so hard to pass these exams. Passing once is already a big deal.”¹⁹

Leaving the public defender office to work in another position of public service is quite arduous; indeed, competing for positions in the judiciary, for example, are also extremely competitive, if not more. In other words, there is great sacrifice involved in seeking alternative employment of comparable stature. Choosing to work in the public defender office long term, however, does not necessarily mean a person must work in the same court throughout their tenure. Yet many public defenders who work in the penal courts of Salvador and São Paulo had done so for several years. More than half of interviewees in both cities had been working in the penal domain for over five years. In Salvador, where the office has existed since 1990, five of these public defenders had been working in the penal courts for over two decades.

In both cities, many public defenders have chosen to continuously provide legal aid to people in penal courts despite having opportunities to work in other types of courts. For those who started working in the public defender offices of Bahia and São Paulo during the early years of each office, providing legal counsel to people in penal cases within each state’s capital city was offices’ top priority. As a result, those who came from these first cohorts had little choice but to counsel people in penal court cases. With far fewer public defenders at the time, each one often worked on cases at various stages of the penal process. The increased number of public defenders in the office over time facilitated a more rationalized and specialized division of legal aid services within the penal domain and also expanded legal aid services to other areas of law, including in civil, family and military courts.

¹⁸ Interview, Public Defender 18, São Paulo, November 2019.

¹⁹ Interview Public Defender 22, São Paulo, November 2019.

Public defenders can request to be transferred to a new court assignment when a new position emerges or becomes available. The priority of requests are based on a public defender's tenure (i.e. the number of years they have worked in the office); those who entered in the early years of each office have therefore had ample opportunities to request a transfer to work in a different type of court outside of the penal domain. For public defenders who entered in more recent cohorts, they typically had the opportunity to choose among a more diverse range of court assignments. After officially being called to enter the office, new public defenders underwent a multi-week training course, composed of lecture seminars by experienced public defenders who work within different types of courts (ESDEP-SP 2019; ESDEP-BA 2018). They also shadowed experienced public defenders in action who worked in different types of courts and areas of law. After completing these weeks of training, cohort members were presented with a list of positions within different types of courts and county jurisdictions that the state office sought to fill. Following any transfer requests from more senior public defenders, new public defenders chose from the remaining assignments. Those with the highest public service exam scores were given first pick; those with lower scores chose from the remaining assignments.

For some public defenders in more recent cohorts, working in penal courts was their top choice from the start. Other public defenders developed a strong preference for penal work over time. Some people first started working within a smaller county, where each public defender typically worked in various areas of law. This more “generalist” legal aid service provided them with exposure to legal aid work in various areas of law, which served as an important basis for affirming their preference—even passion—to work in penal courts in particular. Among public defenders who expressed a strong substantive preference for penal work they highlighted one, or a combination of the following three reasons. (1) They were always fascinated by the substantive penal realm and like the challenge; (2) They feel it is where public defenders can have the “most impact” on socially marginalized people's lives; and (3) They “don't have the stomach” for other particular areas of law in which public defenders work.²⁰

During my interviews with public defenders, I shared how studies on public defenders in the United States often find the profession to be a stigmatized one; not only do clients distrust the quality of public defender services on the basis of it being a service provided to them “for free,” but so too do their court colleagues (Weiss 2005). Moreover, many expressed the frustrations of working in a position in which they felt more broadly stigmatized in everyday culture as a profession that “defends criminals” (McIntyre 1987; Wice 2005). The compounding effect of these different levels of stigmatization have shown in contexts studied in the United States to influence people's disinterest to stay in this line of work long term. I asked public defenders in Salvador and São Paulo during my interviews whether or not they felt a similar stigma. Several interviewees affirmed that in Brazilian society there is indeed a pervasive cultural belief that “a good criminal is a dead criminal” (“*um bandido bom, é um bandido morto*”). When people in public defenders' everyday lives know what is that they do for work, some do indeed ask them why they do what they do, or express disdain. However, several factors served as a sort of “professional buffer” to such instances having substantial influence on their choice of work.

First, “positions of public service are in general extremely prestigious in Brazil,”²¹ and Latin America more broadly. Many public defenders shared that when people asked them what

²⁰ This last reason was most frequently mentioned in relation to working in family law courts, feeling unable to routinely witness the abuses of children in the middle of family disputes.

²¹ Interview, Public Defender 45, São Paulo, December 2019.

they do for work in everyday social interactions, they do not always specify that they are a public defender. Instead, “I just say I’m a public servant.”²² However, this is not for fear of stigma. Rather: “It’s unnecessary to specify what kind of public servant I am. I think specifying that I’m a public defender sounds too ostentatious in everyday interactions, except for maybe social events where I’m among other legal professionals or public servants who know the difference.”

Second, when they do choose to share that they are public defenders, they do not necessarily feel compelled to specify which type of court they work in. For Brazilian society overall, defending people in penal courts is not the most widely socially valued sector, but the public defender office overall is nonetheless a highly respected and trusted office. In a national survey conducted by the National Association of the Ministério Público (public prosecutor office), the Public Defender Office was ranked second only to the Armed Forces in terms of state institutions that people most trust. A crucial element of this public perception is that the public defender office is not first associated with legal practice in the penal domain. Indeed, in the same survey, respondents highlight the public defender office as an especially important state office for supporting youth and family (CNMP 2018).

Third, public defenders frequently shared that many people are not entirely sure what a public defender does. The judiciary has historically been a “black box,” which has contributed to a general lack of clarity in terms of what different legal professions actually do and their role as agents of state authority. Moreover, the public defender office in particular is still a relatively new state institution, and many public defenders reported that people often confuse them with the Ministério Público. Different from the Public Defender Office, the Ministério Público has been an integral institution of state power in Brazil since inception of the Brazilian state. Historically, the profession’s authority has been greatly overpowered by the authority of judges and magistrates, given the strong inquisitorial legal culture that has long characterized Brazilian penal codes and processes (Kant de Lima 2004). The Ministério Público, however, has accumulated significantly greater authority and prestige since democratization. The fact that the public defender is a relatively young profession, coupled with the oftentimes seeming convergence of functions of public defenders and prosecutors in particular non-penal domains of work has contributed a lack of clarity among ordinary people in terms of what a public defender actually is and *does*. Indeed, in both Salvador and São Paulo, public defenders frequently emphasized that it had been only in the past decade that law graduates themselves were becoming more routinely familiar with the public defender office.

These conditions have served as useful “professional buffers” for public defenders who choose to work in penal courts; they allow public defenders to be selective about the moments when they clarify that they work in the penal domain in particular, and what such a job actually entails. Brazil’s highly punitive culture, then, has shown to have minimal impact on public defenders’ overall sense of privilege and authority.

In both Salvador and São Paulo, many public defenders could not imagine working in any other type of court except courts in the penal division for ideological reasons and a strong connection to the social meaning of the services they believed they could provide to poor people within this particular legal domain. For other public defenders, this assignment was initially chosen for primarily practical reasons. The most significant practical motive is the possibility of working in a larger urban jurisdiction. There is high demand for court assignments in both capital cities, and penal court assignments compose a larger portion of city assignments than any other

²² Interview, Public Defender 66, Bahia, August 2022.

specialized area of law. As offices' institutional reach have expanded, court assignments have increasingly opened up in other smaller counties. For those interested to live in an urban jurisdiction then, it has therefore become increasingly difficult for a person to give up these urban assignments once they get them, even if they don't actually like defending people facing prosecution or punishment, or do not feel a strong connection to the nature of the service they provide in this domain. The professional buffers elaborated above do little to mitigate this risk. By contrast, in the following sections, I demonstrate how public defender work routines, especially the nature of direct interaction between public defenders and clients, can mediate people's interest to work in penal court positions long term.

Physical distance/proximity to clients in public defender work routines

Within "social space" (Bourdieu 2000), public defenders in Brazil occupy a significantly more advantaged position. They are holders of significantly more economic capital than people in the majority of other occupations in Brazilian society; the position also grants them significant authority and social prestige. Given the high level of competition over these positions and the bases of this competition, the majority of those who work as public defenders also identify as white, which means that they occupy positions of significant racial privilege. By contrast, the clients whom they serve occupy among the most disadvantaged positions in social space—being poor, criminalized and disproportionately being of marginalized racial identities. Different positions in social space can translate into differences in *physical* space: "the built environment resulting from rival efforts to appropriate material and ideal goods in and through space" (Wacquant 2023, p. 35). The density and nature of social ties, however, influences the relationship between physical space and social space. In less densely populated areas, for example, people with significantly different degrees and types of capital may routinely interact and be "acquainted" with one another in physical space. For marginalized people, this may result in experiencing an organic and routine surveillance by people in positions of power (Showalter 2020). By contrast, in more densely populated regions divisions in social space are likely to be more drastically "reified" within physical space (Bourdieu 2000, p. 162) such that social distance is more likely to correspond to physical distance in terms of the distribution of people with geographic space (Wacquant 2023).

In Brazil, this dynamic translates to poor and socially marginalized people living on the urban peripheries of Salvador and São Paulo, with little access to basic living resources (water, electricity); and with their lives characterized by a neglect of state resources except for brutally violent interventions by policing authorities that lead to arrests, armed conflict or executions (Alves 2018; Santos et al. 2020). By contrast, public defenders live in centralized and resource rich neighborhoods within the geographies of Salvador and São Paulo and they often live in "gated" condominiums (Caldeira 2000) for protection. They also come from social backgrounds and trajectories characterized by a distinct relationship to policing authorities relative to their clients: some grew up having tremendous "respect" for the police believing that they were authorities mandated to "protect" them; others shared having "never given much thought" to policing authorities at all prior to becoming a public defender. Few expressed any sense of fear of policing authorities prior to working in this position. Among the small minority of public defenders who had reported a direct negative confrontation with policing authorities prior to this job, nearly all are connected to their participation in university student activist movements against the country's military dictatorship. Very few public defenders have therefore experienced

first-hand the poverty, marginalization and violence that their clients routinely face. Some public defenders have had more sustained direct interaction with poor people prior to working as a public defender through volunteer experiences or internships during law school. However, for the majority, they were not forced to witness or encounter such experiences within their routine built environments. For many public defenders, then, their most sustained interactions with poor people and their lived realities is through their work as legal aid professionals.

Many public defenders in both Salvador and São Paulo who work in penal courts express a strong passion to work in the penal domain, despite having had opportunities to work in other types of courts over the course of their careers. In fact, for some, their experiences in other types of courts even further solidified their preference to work in penal courts for a variety of reasons—from enjoying the particular challenge of penal work, to feeling that their influence is more decisive in poor people’s lives, to believing that other social domains are “less appropriate” for legal intervention. Others also consider working in penal courts in the city for more practical reasons, especially an interest to live in more urban jurisdictions. The degree of physical proximity/distance between public defenders and their clients, however, does influence their long term perspective and interests in this work.

In the following sections I demonstrate how differences in the relative size of the penal state in the cities of Salvador and São Paulo, as well as the geographic distribution of penal state institutions, influence local work routines such that public defenders in Salvador have much more sustained interaction with clients and their family members as a necessary part of their job in nearly all segments of the penal process. This in turn shapes both who and why people choose to work as public defenders in penal courts long term, or not, in each city.

Organization of public defender work in Salvador, Bahia

The city of Salvador is the capital of the state of Bahia located the country’s Northeastern region. With a total of population of 2.4 million in 2022, Salvador is home to the fifth largest population in comparison to cities countrywide (IBGE 2022). Salvador has long been an influential city, including serving as the country’s first capital (1549 – 1743). With its long eastern coast located along the Atlantic, it was also an influential port city during the long period of transatlantic trade of enslaved African peoples over the course of the 15th through late 19th centuries; it was both a prime destination for enslaved Africans as well as transit site for those who were transported and sold for their labor throughout Brazil and the rest of the Latin American continent (Reis 2004; Schwarcz 2015). This history has deeply shaped the social demography and inequalities that characterize the Bahian state. Today, Bahia is home to the largest population of Afro-diasporic peoples outside of the African continent, and the region is characterized by severe inequalities along racialized lines.

People who identify as *preto* or *pardo* compose the majority of the population, yet the most advantaged and powerful positions in Bahian society are overwhelmingly occupied by the region’s white elite. This dynamic of power and violence is especially salient in the penal domain, where *preto* and *pardo* people are the near exclusive targets of policing authorities (Akotirene 2024; Smith 2016). As of 2022, it was the state with the highest official number of police killings of civilians in the country (FBSP, 2022, p. 59; Santos 2024, p. 6). Among those targeted by the police who do receive a formal legal charge, they are processed and judged by court authorities who disproportionately identify as white and occupy astronomically more

advantaged positions in social space—this includes the public defenders mandated to provide them legal aid in court.

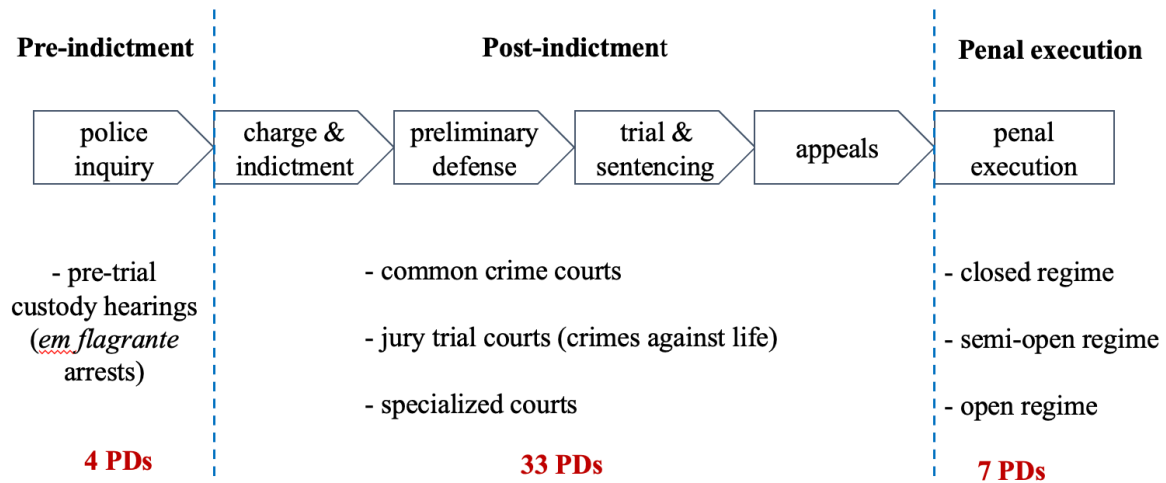
The largest portion of people facing state prosecution or punishment are processed in the courts of Salvador, where 44 public defenders have permanent assignments to counsel people in the city's penal courts. Public defender assignments are organized horizontally, according to three distinct stages of the penal process: pre-trial custody hearings; post-indictment trial courts; and penal execution. See Table 3 and Diagram 1 below.

Table 3. Salvador public defenders, by penal court type

Court type	# Courts	# Courtrooms	# Public defenders
Pre-trial custody court	1	1	4
Post-indictment trial courts (common crimes)	25	28	28
Post-indictment jury trial (crimes against life)	5	5	5
Penal execution	3	3	7
Total	34	37	44

Source: DPE-BA 2019

Diagram 1. Horizontal organization of public defender work (Salvador, Bahia)



Public defenders in these courts indeed initially chose to work in penal courts for various reasons—from feeling a strong interest in the nature of penal law to wanting to move and live in an urban jurisdiction as quickly as possible. However, they also emphasized that it would be very difficult to continue working in these courts without coming to find meaning in the nature of their everyday work. In particular, given the work routines of public defenders in all three stages of the penal process “you need to like interacting with the people.”

Pre-trial work

The four public defenders who work in this court are responsible for counseling and defending people after a police has charged a person with a crime, and before the prosecutor has determined whether to formally prosecute them. Their work consists of two primary activities. The first is specific to people arrested and detained by the police in the jurisdiction of Salvador. The other concerns accompanying people's cases in the pre-indictment phase state-wide.

In Salvador, within 24 hours of arrest, a person must be physically taken in front of a judge and prosecutor to decide whether they will be held in confinement prior to their trial date or not. For this hearing, the *audiência de custódia*, each person must have a defense attorney. A total of three public defenders are assigned to work in this court, with one public defender working on all cases for a particular day (and the fourth person serving as an "alternate"). On days when not working in custody hearings, they work from their offices in the public defender office building in the *centro administrativo*. On these days, their routine consists of paperwork, primarily reviewing the cases of people in other county jurisdictions in which their pre-trial custody hearings do not take place.

While today the *audiência de custódia* is a routine part of the penal process in Salvador, these hearings are overall relatively new component of penal procedure in the state, and Brazil more broadly. Custody hearings emerged as a new component of the penal procedure in 2015. This initiative has been justified by reformers as means of reducing "arbitrary" pre-trial confinement and overseeing police work and potential abuses early on (CNJ 2015). Since then, it has consolidated as a routine part of penal process in urban jurisdictions; in less urban jurisdictions, however, they are not yet routinely implemented. Instead, outside of Salvador, it is done as it has been for centuries in Brazil, in which there is no direct interaction between the judge and the defendant before their actual trial. To decide if a person will be held in confinement before then involves the judge receiving and reading the initial police report, and deciding based on the written statement. Public defenders therefore oversee people held in pre-trial confinement, especially when they have been held in pre-trial confinement for illegitimate reasons, without sufficient cause, or have surpassed the maximum number of days that a person can be detained without trial. While this is indeed a lot of paperwork for public defenders throughout the week, their work in Salvador's custody hearings involves much interaction with their clients, as well as their courtroom colleagues.

Custody hearings take place in Salvador's *núcleo de prisão em flagrante*, a courthouse building specifically designated to administer these hearings, which is also connected to the city's central police station for the Civil Police—who are responsible for processing anyone upon initial arrest and producing the initial "BO" (*boletim de ocorrência*) that serves as the primary basis on which the judge will evaluate each person's case. Any person arrested and detained in one of the city's 28 local police stations is transported to this central police station if they are being charged for a crime that may qualify for a sanction of incarceration. A total of 5,117 *audiências de custódia* took place in 2019 alone (DPE-BA 2020).

In addition to people who are arrested *em flagrante* overall being very poor, it is extremely difficult for someone to already find a private attorney at the time of their arrest and before their trial. With there being 8-15 hearings taking place each day, the public defender assigned to work in these hearings provides counsel in an estimated 80 percent of cases. The public defender meets with each client individually prior to the start of the hearings. During my observations, each meeting lasted between 5 and 20 minutes per person. Public defenders start

these meetings early in the day at 8am, before the docket is set, and before the judge has arrived, during which time the clerk's office is still organizing the schedule in order to have enough time to speak with each client. Public defenders share their office space with one assistant. The public defender skims the police report prior to the client's entry, then the assistant welcomes the client in to sit down across the public defender's table. The public defender has several objectives: to explain the police's "version" of the situation to their client, ask them about their "version" of what occurred, obtain information from them to call a family member or loved one to inform them they have been arrested, probe about potential police torture or violence since their moment of arrest, orient them about what will take place in the pre-trial custody hearing and provide advice on how to approach the hearing.

Post-indictment courts

After a person's initial arrest and the pre-trial custody hearing (for *em flagrante* cases), each person's case is assigned to a post-indictment trial court. The court to which they're assigned is based on the nature of the legal offense to which they're being accused by the state- be it property crimes, drugs, domestic violence or crimes against life. Among these types of cases, only crimes against life are completed through trial by jury. All others are decided by a bench trial where a person's fate is decided by a judge, following a sequence of practices that compose the courtroom ritual in which a prosecutor and defense attorney play part.

Public defenders in these courts have various tasks that compose their weekly work routines, and while there are differences between them, there are several similarities, including the relative frequency of interaction with clients and other community members. Except for jury trials, all of these courts have hearings scheduled for each morning of the week, with an average of five hearings scheduled each morning. Of these five, public defenders took on an average of three cases. The remainder of their work tasks were conducted during the afternoons, including paperwork, meetings with family members and clients. Paperwork included various elements of their client's court procedure: preliminary defense motions, requests for pre-trial release, written final arguments, and also appeals of trial court decisions to higher courts.

Additionally, three out of five afternoons are reserved for meeting with clients, families and any potential defense witnesses. Public defenders dedicate two afternoons a week to holding such meetings in the public defender office building. They meet with clients who are on pre-trial release wanting to talk about their case, and also family members, especially of clients who are incarcerated. Any potential witnesses, learning about status of case, providing any information that could be helpful to the public defender, etc. Additionally, once a week, each public defender visits any clients who are held in pre-trial confinement, all of whom are detained in the Centro de Detenção (CDP), which is a 15-minute drive from their office to the nearby city of Mata Escura located just outside of Salvador.

Penal execution courts

Penal execution is the third and final stage of the penal process, during which time courts administer the punishment of a person who has been convicted of a criminal legal offense. Public defenders are responsible for following convicted people's sentencing progression. Punishment in Brazil is classified into three different categories, which correspond to different levels of punitiveness: (1) closed regime incarceration, which is 24-hour confinement; (2) semi-open

regime, in which people are required to participate in work programs by day and are incarcerated at night; and (3) open regime, where people carry out a sentence outside of carceral walls, with certain restrictions, and which typically involves a kind of community service (Brazil 1941).

One important component of public defenders' work in this stage is following their clients' progression *on paper*. People who start serving their punishments in more punitive regimes progressively transition to less punitive regimes. Certain behaviors can reduce the time needed to serve a punishment, while other practices, such as a person exercising certain prohibited behaviors within the prison may increase time or punitiveness of their sentence. Progression or regression of regimes are decided by a judge in court hearings that take place once a month. In addition to this work of calculation and oversight, a crucial part of public defenders' work also involves a more constant presence in the lives of people held under confinement. Like other public defenders, they too have an office in the public defender office for their paperwork. However, different from their colleagues, they also have a second office located *within* the penitentiary. Each of these five public defenders has a permanent office in one of the four carceral establishment in which people carry out their sentences; and they work in these offices three times a week—conducting daily meetings with clients, to follow their case, answer questions, and also advocate for their basic needs—from needing medical treatment, to informing them of their opportunities for sentence reduction, etc.

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For many public defenders in Salvador, routine interactions with clients were their favorite part of the job, believing that it played an integral role in constructing and understanding the significance of their work and also to put into check their worldviews from positions of especially high social privilege:

Here in the *defensoria*, we're required to go to the prisons to visit our clients and I think that's essential. It should always be required. We have to see *reality*. So that we don't forget, you know? For us to do what we do, to fight for a person who could be convicted. A person could pass through the Brazilian prison system and that motivates us to do a decent job; we have to have that contact, that experience. It's important to see that reality, because a lot of times the judge, prosecutor, and even the public defender, well, we become very isolated from people's reality. When you see it, you have a new perspective. Of course, all sorts of other questions come into play—ideology, a person's life story, all of that. But I still think that whoever it is, interacting with people and seeing their reality changes us a little. I think that interacting with people on the day to day, the *defensoria* has changed a lot because of us having that contact with people—contact with a reality that I would never have from my middle-class life, from having been someone who grew up in private schools, in an isolated world.²³

For many who chose to work in penal courts long term, they described these interactions as important moments of interpolation of their worldview and also a key occupational motivator. Public defenders also emphasized that for others, these same interactions become a deterrent to working in the penal division of the office long term. Many interviewees referred to the sensorial

²³ Interview, Public Defender 2, Bahia, April 2018.

experience of their physical proximity to their clients, of experiencing the “stench of poverty” and witnessing the physical markers on clients’ bodies of living a life of poverty, racism and violence. As one public defender said, “you have to learn to get used to the smell of prison, or there’s really no way to stick around.”²⁴

Organization of public defender work in São Paulo

The city of São Paulo is the capital of São Paulo State; geographically located in the country’s Southeast, it is the most industrialized region of the country. Demographically, São Paulo state has also been profoundly shaped by the genocide of peoples indigenous to the region prior to Portuguese colonial rule and the forced migration of enslaved Afro-diasporic peoples between the 15th and late 19th centuries. It was a prime destination in the early 20th century for state-financed migration of Western Europeans, as well as various waves of migration from Asia, especially Japan (Andrews 1991; Schwarcz 2003).

State authorities’ penal capacity in the state of São Paulo is robust relative to most other Brazilian states, including its policing capacity and court infrastructure. Penal courts manage more cases per year than any other state (CNMP 2018), and the state is a top incarcerator. With over 197,000 people incarcerated in pre-trial detention or penitentiary facilities state-wide, São Paulo confines nearly one third of all people detained behind bars in the entire country (SENAPPEN 2024, p. 12). *Pardo, preto* and indigenous people compose minorities in the region’s overall population but are disproportionately targeted by penal state institutions (Alves 2018; Willis 2022).

The largest number of people charged by policing authorities in the region are managed and judged by penal courts within the city of São Paulo. With a total of 12.3 million inhabitants (nearly six times more than Salvador), São Paulo city not only ranks as the most populous city in all of Brazil, but it is also the largest city in terms of population worldwide outside of the continent of Asia (World Population Review 2024). 111 public defenders are responsible for providing legal aid to anyone in all of São Paulo city who are facing state prosecution or punishment and do not have the economic means to pay for an attorney. Similar to public defenders in Salvador, their work assignments are organized horizontally, according to the three distinct stages of the penal process (see Table 4 below).

²⁴ Interview, Public Defender 33, Bahia, July 2020.

Table 4. São Paulo city penal courts, courtrooms and public defenders

Judicial unit type	Courts	Courtrooms	Public defenders
Pre-indictment (Pre-trial custody hearings)	1	7	7
Post-indictment (Common crime and specialized courts)	35	67	69
Post-indictment (Jury trial court)	5	18	18
Penal execution	5	n.a.	17
Total	58	93	111

Source: DPE-SP (2019)

Despite sharing a horizontal division of labor similar to public defenders in Salvador, the nature of public defender work routines in São Paulo differ in important ways. In particular, public defenders overall have significantly less routine interactions with clients and their families.

Pre-trial work

Similar to Salvador, the seven public defenders who are assigned to this pre-indictment phase have two primary functions. One is to oversee people's pre-trial detention in counties throughout the state within which no other public defender is assigned to keep in check the duration for which people are held in confinement prior to their actual trial. Secondly, they are responsible for counseling and defending people in the city of São Paulo during their pre-trial custody hearing following an *em flagrante* arrest, which compose over 80 percent of penal cases processed in court.

The number of people arrested and detained each day in São Paulo is significantly greater than in Salvador. In contrast to the fifteen people transported by policing authorities for custody hearings each day in Salvador, there are an average of 88 custody hearings per day in São Paulo (Polícia Militar - SP 2019). Custody hearings take place simultaneously in seven different courtrooms each morning, each with its own presiding judge, prosecutor, and public defender.

Custody hearings in the penal courthouse are on a tight schedule, beginning at 1pm and needing to end by 4pm each evening, a significantly smaller window than in Salvador, which is related to differences in the location of custody hearings relative to the police stations where people are initially taken after arrest. In Salvador, the custody building is physically connected to the main civil police precinct; people arrested the night before there will be transported from other precincts to this main police precinct each day, but the majority will already be in the location where they will also have their custody hearing. By contrast, in São Paulo, custody hearings take place each day in the city's main penal courthouse--the Fórum Criminal located in

the neighborhood of Barra Funda. This is the largest penal courthouse in all of Latin America, with an estimated 8,000 people circulating throughout this building each day (TJ-SP 2019). The penal division of the public prosecutor's office is located just adjacent this building, and offices for judges and public defenders are located within the building itself. Within this courthouse are nearly all courts and courtrooms that manage all stages of the penal process for the majority of people facing state prosecution and punishment (except for courts of appeal).

In contrast to Salvador, then, the location of pre-trial custody hearings is different from that of the police precinct in which they are initially processed after their arrest. No person may be held in detention within the courthouse overnight; the daily running of custody hearings then is highly dependent on a hyper-rationalized schedule. In contrast to Salvador, one main civil police precinct, there are a total of eight main civil police precincts in São Paulo, which initially process any person arrested and detained in one of the city's 103 local police stations. Police cars from each of these eight precincts located throughout the city transport all people who must attend a pre-trial custody hearing to the courthouse in Barra Funda each morning. Police cars start arriving at the courthouse as early as 8am, when the courthouse officially opens; however, public defenders cannot speak with their clients until each person undergoes a thorough physical "review" and inspection and is "prepared" by the courthouse military police for their hearing. With just three hours for each courtroom to get through all of the hearings scheduled on the docket, public defenders have very little time and interaction with each of their clients, often lasting just a few minutes within the hallways of the courthouse before stepping into their hearing.

Post-indictment courts

Following a formal penal charge submitted by the prosecutor's office, each person's case is distributed to one of the São Paulo's post-indictment courts. There are a total of 40 post-indictment courts; the largest portion of cases are processed in varas singulares, or common crime courts, which process any type of case with a prison sentence of two years or more, except for crimes against life which are processed in courts specific to such cases.

As in Salvador, each public defender is assigned to a specific court type. They are responsible for any person whose case is assigned to that court and who does not have a public defender. A central activity that composes their work routine is bench trial hearings, which take place in most courtrooms four days each week, from Monday through Thursday. In some courts, judges will also schedule hearings for Fridays, however, in most courts this day is reserved for paperwork, not only for public defenders, but also prosecutors and judges. Paperwork is a crucial part of their job; as in Salvador, for public defenders, this includes initial defense motions, writs of habeas corpus, and their submission of written closing arguments following completion of each trial, and before the judge submits their final verdict.

If on the one hand, these public defenders have significantly more paperwork volume than those in Salvador in post-indictment courts; on the other, they have much less required interaction with their clients and families. First, in contrast to Salvador, meeting with their clients who are held in pre-trial detention is not a required task that is part of their job activities. In contrast to Salvador, where all people are held in pre-trial confinement within two facilities located just 15 minutes from public defenders' office building, in São Paulo, people who are held in confinement prior to their trials in São Paulo are confined in one of *seventeen* different facilities distributed throughout the city itself as well as other jurisdictions along the

metropolitan periphery (Secretaria de Administração Penitenciária 2024). Getting from the location of public defenders' office in Barra Funda to nearly all of these facilities takes several hours (in contrast to the 15 minutes it takes public defenders in Salvador to visit the local detention centers). As a result, it is literally impossible for public defenders to travel to visit each of their clients in each of these detention centers and still carry out their other duties.

Instead, the office organizes a schedule in which each of these 17 detentions centers (CDPs) is visited by a different public defender each day. Each public defender who makes such visits does so once a month, but the office organizes a schedule in which public defenders make such visits on different days so that each CDP receives a visit from a staff attorney an average of 2-3 times each week. In other words, rather than a public defender visiting their own clients, they visit any person in the one detention center they visit who is awaiting trial and lacks a private defense attorney to represent them in court. The information they gather from this visit will then subsequently be passed on to the public defender via an electronic system to inform their strategy leading up to their client's actual trial.

Public defenders not only have limited interaction with their own clients, but visiting a detention center at all has become an *optional* part of the job. The office's ability to guarantee routine visits to each CDP does not require participation of all 111 public defenders who work in the penal domain; instead, it is an optional task that is sufficiently incentivized to guarantee visits by providing an added financial bonus on these public defenders' monthly paychecks. In addition to people's interaction with incarcerated clients being an optional part of the job, public defenders' interaction with clients who are not incarcerated before their trial, or their family members, is also extremely limited. Different from Salvador, where these meetings are conducted by public defenders themselves, most of such conversations and interactions are conducted by interns in a separate wing of the courthouse.

Thus, beyond the 30 seconds to five minutes maximum they may have of interaction immediately before their client's trial hearing, direct interaction with the people they most directly serve is optional, and even then, structurally limited by the organization of their work.

Penal execution courts

Within the Forum Criminal courthouse, there are a total of five courts that manage people who have been convicted and are actively carrying out their penal sentence. Sentence progression hearings take place once a month. However, public defender work in such courts is otherwise starkly different from those in Salvador. In contrast to Salvador, where public defenders have routine interaction with clients within the penitentiary, public defenders in São Paulo have virtually no direct interaction with clients during this stage. Offices are located within the penal courthouse and the bulk of their work is composed of paperwork (Godoi 2019), where they manage the sentencing progression of all people who have been convicted and are actively carrying out their sentence.

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In contrast to public defenders' work routines in Salvador, interaction with clients in São Paulo is characterized by significantly greater physical distance between public defenders and their clients, with interaction much more restricted and oftentimes only optional for those who work in particular types of penal courts. Many public defenders in São Paulo expressed a strong

passion for working on penal cases in particular and couldn't imagine working anywhere else. However, the nature of the work itself was also much less likely to deter people who were interested to work in the position for practical reasons and otherwise disconnected or disinterested in their clients. The nature of public defender work in this city is less likely to inhibit people from continuing to work in penal courts long term who are primarily interested in the practical advantages of the position, especially its location in the country's largest metropolis. Indeed, while public defenders could choose to work in other types of courts, the largest number of work assignments in the *city* of São Paulo are in the penal domain, meaning that an assignment in a penal court may be the only way for them to live there. As a result, those passionate about their work fervently distinguished themselves from those among their ranks who they described as showing a blatant "disgust for poor people."

Conclusion

In this chapter I analyzed the trajectories and motivations of public defenders in Salvador and São Paulo to address the question of why law graduates come to work as legal aid professionals. Previous scholarship shows that law graduates may be motivated to pursue work as legal aid professionals for various reasons (Arriagada 2023; Baćak, Lageson, and Powell 2020; Weiss 2005; Wice 2005). However, not all law graduates interested in such positions are necessarily admitted to legal aid offices. I demonstrate that the requirements of entry, level of competition, and ground level legal aid work routines are important to explaining who ends up actually becoming a defender and staying long term.

Brazil's public defenders are a salient example to develop this argument. Since Brazil's return to democracy, increasingly high public defender salaries, stability, and prestige of the position have made the public defender a highly sought-after occupation country-wide amid a hypercompetitive market for law graduates. Be it that they are driven by political motivations, pragmatic ones, or a combination of both, becoming a public defender requires possessing the resources (strong legal training, time, and financial stability) to successfully vie over a limited number of positions. On the one hand, the significant advantages of the position have facilitated the retention of well-trained legal aid workers guided by a strong commitment to providing services to socially disadvantaged people. On the other, the pragmatic advantages of the position have also attracted people who may be otherwise disinterested in the substantive nature and mission of public defender work. The penal domain is but one of many areas of law in which candidates admitted to the public defender office can choose to work. Many public defenders who work in Salvador and São Paulo's penal courts expressed a strong preference for such assignments for political or ideological reasons; by contrast, given that penal court assignments compose the largest portion of positions in these two urban regions, others initially preferred such assignments to avoid an alternative position in a smaller less densely population county.

Given high competition and the requirements of entry, there is a significant social distance between public defenders and their clients in social space, such that most public defenders come to the job with little or no familiarity with the lived experiences of their clients. While they may have come to the job for a variety of motivations, the degree of physical distance between them and clients influences their motivations to remain working in penal courts long term or not. In Salvador, direct engagement and interaction with their clients and families routinely provides an opportunity for them to find meaning and motivation in their work under conditions that systematically subject their clients to various forms of violence far different from

their own experiences of privilege; and it can also function as a useful deterrent to those disinterested in the very clients they are mandated to serve. By contrast, with significantly less direct interaction in São Paulo, there are fewer mitigating conditions to the paper-pushing bureaucrat staying in this position long term.

III. THE ROLE OF THE PUBLIC DEFENDER

Chapter summary. How do legal aid professionals understand their mandate? Research emphasizes zealousness as an important characteristic of the “good” legal aid worker, given the many challenges they face throughout the penal process to defend their clients’ interests. However, the orientation of this motivational drive depends on what these professionals understand to be their mandate, which is influenced by what they perceive to be possible and distinctive from their position within the broader division of court labor. In this chapter I examine how public defenders in Salvador and São Paulo understand their mandate in relation to the clients they serve. Public defenders emphasize three roles: (1) harm reduction; (2) providing clients information from which they are systematically denied; and (3) humanizing clients in the eyes of other court authorities who will make crucial decisions about their lives. I find significant differences in the roles emphasized in each city among those working even within the same penal stage. Far from reducible to personality or ideology, I show how variation is influenced by differences in the resources, practices and interactions that characterize their position.

Introduction

In Chapter 2, I demonstrated how people may choose to work as public defenders in Brazil’s penal courts for various reasons. Differences in the practical organization of public defender work between Salvador and São Paulo also influence who chooses to provide legal aid to poor people in penal courts long term. In this chapter, I turn to examine what public defenders understand to be their professional mandate.

Studies place great emphasis on zealousness as an essential measure of excellence in this profession. Research on “court communities” emphasizes the importance of “zealousness” for legal aid professionals to effectively carry out their work given the many obstacles faced under conditions in which they and their clients are highly disadvantaged throughout the court process (Eisenstein, Flemming, and Nardulli 1999, p. 287). This ideal of the advocate who “fights tooth and nail” for their client (*ibid*) has also shown to be a defining feature of what makes a “good defender” from the perspectives of legal aid workers themselves. Strong motivational drive can indeed be essential to legal aid workers’ being able to influence penal court processes in ways that can benefit their clients in some way. Various factors ultimately influence penal court processes and outcomes—sometimes even the occasional “good”²⁵ one for clients. As a result, rather than an explanation of outcomes, the “quality of effort” becomes the measure of excellence for legal aid workers (Wice 2005, p. 154). In instances in which a sense of impotence comes creeping in, carrying out their work with a relentless drive can offer a minimum of solace that their client’s suffering was out of their hands.

However, effort and motivation can be oriented toward various aims. In this chapter I therefore ask: how do legal aid workers understand their mandate? As professionals, legal aid

²⁵ In Wice’s (2005) study of public defenders in Essex County, New Jersey, interviewees note that they cannot take credit for every courtroom “victory”; indeed, “anyone can win with a good set of facts” (p. 154).

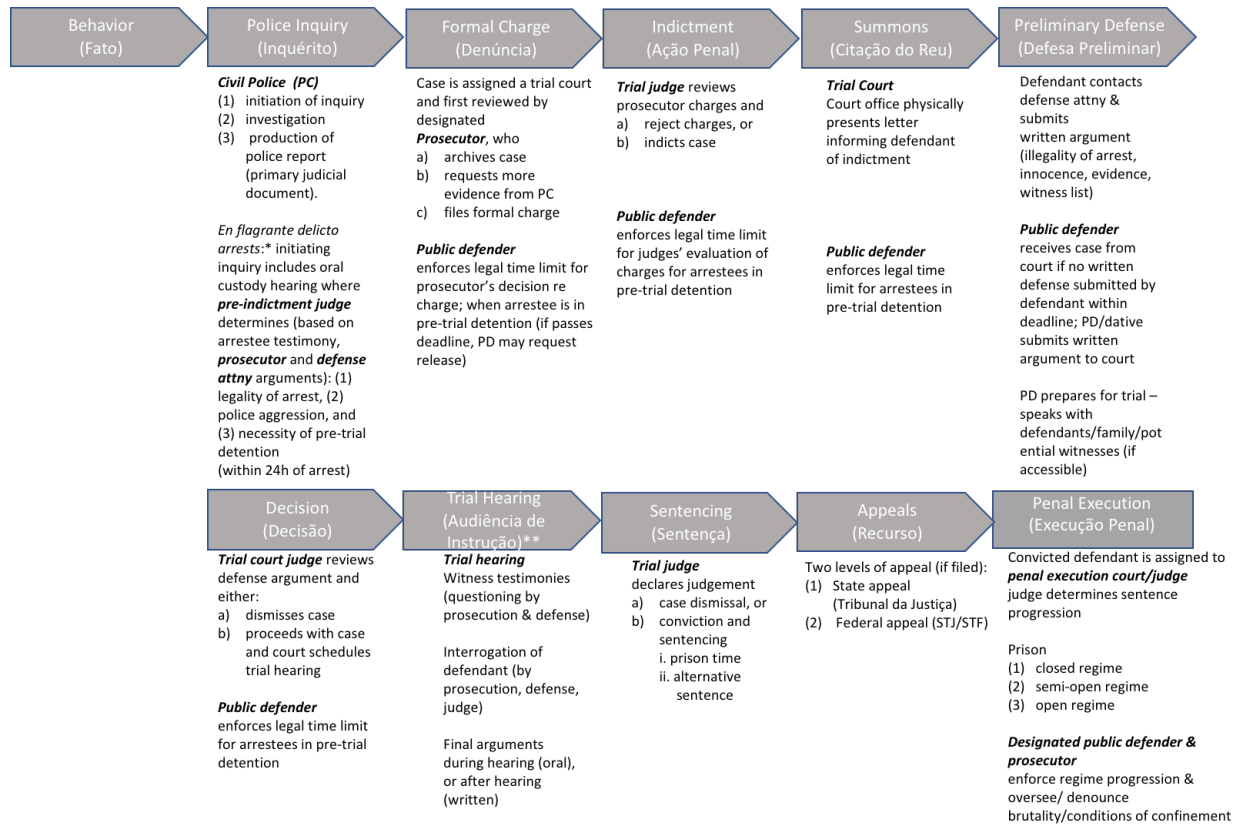
workers are holders of license and recognized as “experts,” which positions them to be able to address certain problems for clients through their services. In this chapter I elaborate three roles public defenders in Salvador and São Paulo perceived as central to their mandate in practice: (1) harm reducers; (2) providers of information from which they are systematically denied; and (3) humanizers of clients in the eyes of other court authorities.

In both cities, public defender work is organized into three distinct stages; across both cities and all three stages, many public defenders emphasized their role as harm reducers on the basis of the technical legal expertise that characterizes their professional craft. By contrast, emphases on their roles as information bearers and humanizers varied more widely. Far from reducible to personality or ideology, I show how explaining this variation requires accounting for differences between these cities in the resources, interactions and environments that characterize their work in certain stages.

The multi-faceted role of Brazil’s public defenders

In Brazil, two main written legal codes articulate when and how penal state authorities can and should exercise their coercive power. First, there is the Penal Code, which articulates the full range of criminalized behaviors that should be punished, as well as the minimum and maximum sanction that can be legitimately meted out by state authorities toward people convicted of having practiced the criminalized act. Second, there is the Penal Procedure Code, which elaborates the process by which people and behaviors should be investigated, charged, prosecuted, evaluated and punished if they are ultimately convicted by the state. The carrying out of this procedure depends on different court authorities, each of which plays a specialized role within the broader division of functions that compose this process. At the state level, which processes the majority of penal cases, the primary institutions responsible for carrying out the penal process are policing institutions, the judiciary, public prosecutor office, and the public defender office. (See Diagram 2 below for general organization of penal court procedure and actors).

Diagram 2. Penal court process and actors in common crime cases



Each of the state institutions mandated to carry out specific elements of this procedure are also organized and structured by national legislation that elaborates the function and license of each institution and the role of the occupational actors who compose it. In the case of the Public Defender Office, the country's written Constitution elaborates in extensive detail the structure of the Public Defender Office, and the domain of its administrative authority. The Constitution defines the structure and function of the office, the role of people who occupy administrative functions, as well as public defenders assigned to work in specific courts.

Brazil's legislation officially sanctions a broad mandate for public defender offices. Offices are mandated to provide "juridical" assistance to indigent people in need of such services at all levels of state administration (Section IV, Art 106). The term "juridical," or *jurídico* in portuguese, encompasses a range of functions that includes, but is not limited to *legal* functions, or those that most directly refer to authority and expertise in relation to legal processes (Alves 2006). Instead, the office is broadly mandated to provide an "interdisciplinary service" that can attend to people's "individual, diffuse," or "collective" interests (Section IV, Art 106). As part of executing this function, each office is composed of specialized "nuclei" that focus on providing

services to vulnerable populations. In addition to the work of public defenders through these nuclei, the main function of the office is executed by the public defenders who work in the courts. The official role of public defenders who work in local courts is a multi-faceted one, where they are responsible for providing “Juridical guidance and defense of clients [*assistidos*], in the legal, extra-legal and administrative domains” (Section VI, Art 108).

As state authorities with such a range of domains of influence, public defenders are also granted broad license and authority—from “attending to legal parties as well as other interested actors” (Art. 108, paragraph I), to “certifying and authenticating copies of documents necessary for relevant administrative or legal procedures” (Art. 108, paragraph III). They are also granted voting power and license to participate on Penitentiary Councils that routinely audit and provide prescriptions for reforms in penitentiary systems country-wide (Art. 108, paragraph II); and they have license to carry out their work in carceral establishments—“prison, police and detention establishments, as well as those reserved for youth,” in order to carry out a “permanent juridical assistance” to pre-trial and sentenced detainees, as well as those under medical internment or youth (Art. 108, paragraph IV).

Written law there defines public defenders as state agents with “legal,” “extra-legal” and “administrative” functions. However, like any occupation (Hughes 1984), perceptions of their role in practice are shaped by the constraints and conditions of the broader work processes of which they are a part. In the following three sections I elaborate three roles public defenders in Salvador and São Paulo emphasize: (1) harm reducers, (2) information bearers, and (3) humanizers for clients and their families. Then, I demonstrate that, like legal aid workers previously studied (Wice 2005), zealousness—or “fierceness”—is highlighted by many as essential to carrying out their mandate “well.” Lastly, I find that there are nonetheless differences between public defenders in each city in certain stages in terms of the extent to which they emphasize certain roles over others as decisive from their ground level work position.

Technical legal action as harm reduction

Among the characteristic features of a profession are “technique” and “abstract knowledge” (Abbott 1988). Given the requirements of any legal aid profession, public defenders possess specialized knowledge of written law—or, what Bourdieu (1987) refers to as a “mastery of words and written rules,” which serve as a central basis for orienting and legitimizing penal processes and outcomes. This expertise is therefore key to legal aid workers’ understanding of the type of service they can provide to their clients (Wice 2005). In Salvador and São Paulo they refer to this ability as the strong “technical defense.” Rather than believing they can effectively provide “due process,” or access to ample resources for a robust defense, they emphasize working under conditions of severe constraint. Instead of “due process,” then, many emphasize their mandate as one of reducing the harm their clients inevitably face. As one São Paulo public defender who has worked in penal courts at several different stages over the years said:

Well, to start with, ideally we would have contact with the person, the defendant, right from the beginning of the procedure, like private attorneys do. Since that’s impossible, especially to see every client who is in detention—I mean, we visit people in the detention centers but not usually our own clients. So, forgetting the ideal world, what can we do? There aren’t enough public defenders, we need a lot more. I think in the ideal situation we would be able to take great care with each case, look over everything that

was produced, try to find the maximum evidence, question everything, talk with the defendant, I don't know—actively try to prove the opposite at any cost. Sometimes the defendant confesses, sometimes they did the thing they're being charged of, but our job is still to soften as much as possible the consequences. Like, oh, the sentence is X, and that's an exaggerated sentence. We can try to reduce that, that sentence is really high. Like that. Or trying to make sure that the law is applied no matter what, because you know, it's not always applied right. Judges sanction sentences that are outside of the law, don't grant privileges when they are supposed to. I was in a hearings where the judge literally said "I don't allow that privilege to anyone." It's the same thing as a judge saying "I don't apply the law." So my job is to try to reduce the harm in all of that, as much as is possible, be it to get someone released from prison, or to reduce the time it takes for them to finish out their sentence. Because we know that that person is never going to be able to get a job after all of that, they're just going to continue the cycle: committing crimes because there's no other way to survive. If they can't get a job, well, they need to eat. And that's how it goes on and on.²⁶

Similarly, from a public defender in Salvador:

In the penal domain, our first mission is to guarantee that everyone has the best possible technical defense. Guaranteeing that there isn't going to be a judgement that comes down where a person is going to be convicted just because the person who defended them was someone that the judge assigned to give some sort of formality to that decision, the end. Technical work, then, isn't just a formality. A public defender has to have the mission to raise points of view and experiences that are different and contradict a consensus on how things should be done culturally, for example, and find the basis of doing so within the law itself. A public defender in the penal area can't be afraid to appeal a judge's decision, and even take decisions as far as the highest federal court to no longer make certain types of court decisions that were once routine no longer be so. For example, judges in the penal execution phase often times require all sorts of exams [medical and psychological] before allowing them to be transferred to a less punitive regime, or to release them after their sentence has been fully completed. The written law doesn't require this; and it is a person's right to be released after they have completed their sentence. As much as a judge might create obstacles to releasing them and justify all of their requirements on the basis of it "always being done this way," that's not enough, and we have to have the technical expertise to challenge that kind of culture.²⁷

Public defenders' legal expertise is one of the defining features of the service they provide to clients, but they can nonetheless understand their relationship to the law in significantly different ways. On the one side, there are those who see themselves as "refiners" of the law. Refiners are those who believe their role is to make the law "work the way it is supposed to work." On the other, there are those who see themselves as "disruptors," of the law and a logic that fundamentally always criminalizes the most disadvantaged people in society—that is, people who are *"preto, pobre e da periferia"* (black, poor and from the urban periphery). Written penal

²⁶ Interview, Public Defender 41, São Paulo, December 2019

²⁷ Interview, Public Defender 47, Bahia, June 2020.

procedure defines the role of defense attorneys as one of ensuring defendants' rights, and their access to legal resources necessary to guarantee a "fair trial" and their ability to pursue their interests (Brazil 1941). But in practice, neither refiners nor disruptors believed that "true justice" is possible through the Brazilian penal state.

In other interviews, public defenders highlighted the example of *Lava Jato*, or "Operation Carwash." The majority of my interviews were conducted over the years in which this high-profile corruption case gained widespread attention world-wide. With this case fresh in people's minds, it frequently came up as an example of the injustice of the penal system. Operation Carwash is an elaborate investigation of criminalized practices by Brazil's political elites. The widespread attention of this case also represented for many public defenders the exceptional nature of managing and evaluating Brazilian elites through penal procedures. The targeting of elites is of such exceptional nature that those who have been convicted and sentenced to prison—in the few cases where the punishment is in fact a prison sentence—are contained in "exceptional" prisons (Willis 2019). The relegation of routine punishment for poor people is so entrenched into the very logic of Brazilian penalty that the exceptional few facing punishment from more privileged segments are relegated to distinct carceral spaces. Indeed, Brazilian law explicitly mandates that those with any level of higher education be confined separately from other penal subjects in a bona fide "prison of the elite" (Nunes 2019).

In addition to the Brazilian white elite being subject to a "differentiated" regime of punishment when convicted (Willis 2022), the scrutiny of evidence and its validity for conviction in such cases is equally differentiated. In the case of Operation Carwash, these investigations and penal procedures greatly foiled how penal procedures unfold for public defenders and their clients. Investigations conducted by the Brazilian Federal Police in the former instance have been conducted over the course of years, even glorified in the 2017 blockbuster film *Federal Police: No One is Above the Law* for their elaborateness and as an act to hold accountable the upper echelons of Brazilian society who have long been immune from state punishment. This investigative rigor involved in such cases however stands in stark contrast to the spotty or entirely absent investigation and collection of evidence involved in the arrest, prosecution and conviction of the masses of poor people routinely processed in the country's local penal courts.

People are charged with a criminal-legal offense through one of two ways: investigation or allegedly *em flagrante delicto* ("caught red-handed"). The majority of people charged by the police, prosecuted and convicted in court are based on *em flagrante delicto* arrests. Despite widespread public distrust of policing authorities in Brazil, the eye-witness testimony is the sole basis of conviction in the majority of cases. Cases in which police officer eye-witness testimony are the sole basis of material to evaluate lead to high conviction rates; and, in an ironic twist, the existence of a police investigation or evidence beyond police eye-witness testimony increases the possibility of *avoiding* conviction, according to many interviewees. Some public defenders emphasized that that cases in which they are most likely to avoid conviction for their clients are cases in which there is a police investigation. Different from the widely familiar case of *Lava Jato*, which was investigated by the Brazilian Federal Police, it is the state-level Civil Police institutions that are responsible for investigating the mass of penal cases. The validity of civil police investigations is frequently put into question among penal court actors. Indeed, most civil police officers are low-paid, possess weak administrative and investigatory capacity, and, relatedly, are prone to clientelistic relationships with organized crime—either due to interest in reaping the spoils of lucrative illicit commerce or out of necessity for the safety of their lives and those of their family members (Willis 2015).

When a case reaches the desk of a prosecutor on the basis of civil police investigation, the prosecutor's decision to prosecute the person or not depends on their evaluation of the civil police investigation. Interviewed judges in prosecutors in both São Paulo and Salvador emphasized the weak investigatory work of the civil police. This may often times require them to provide more evidence for them to decide whether or not to move forward with prosecuting a person (Misse 2010). Public defenders who work in common crime penal courts argue that overall it is very difficult to avoid a guilty verdict for their client, but among those with a greater chance of doing so are cases that *do* involve a police investigation.

The distinct ideologies of “refiners” and “disruptors” often corresponded to different affinities among public defender colleagues. At the end of each interview with a public defender, as part of my snowball sampling strategy I would ask each interviewee if they could recommend two public defender colleagues I might reach out to interview for the study. Specifically, I would ask them to recommend one person who may have a relatively similar perspective, and one they thought might offer a distinct perspective from their own. Most public defenders provided both contacts, along with a brief elaboration of what they thought each colleague might offer in terms of perspective. It was often the case that one of them was a “bom amigo” (good friend); this person was most typically the person that most aligned with their understanding of the public defender's relationship to the law. For some, these friendships were crucial to getting through the grind of everyday public defender work, and also an important part of finding solace in moments of a creeping sense of impotence in the face of much social suffering. Ultimately, however, public defenders' diverging points of view on their relationship to the law did not correspond to meaningful differences in what they believed their technical expertise could achieve for their clients, that is: harm reduction.

Bearers of information

As holders of what is recognized as “expert knowledge” professionals are bearers of information that is important to being able to address their clients' problems. In some professions, the basis of their service relates to clients being “overburdened” with information (Abbott 1988).²⁸ By contrast, in the case of legal aid workers, these professionals are positioned to provide information to clients who are systematically excluded from it. Poor people in Brazil have a tremendous amount of knowledge and understanding of state power, of its capacity and enduring force to impose social suffering through their lived experiences. However, they lack access to knowledge about the technical elements of the penal procedure itself; and, despite being the people most directly impacted by penal state institutions, they are oftentimes the last to know the status of their case or the implications of certain authorities' decisions for their lives.

In Salvador and São Paulo, public defenders routinely emphasize their role as bearers of information for clients as well as their families. Public defenders can provide information to clients and their families (1) to arm clients and families with resources to protect themselves during the penal process; (2) support clients in making informed decisions in critical moments

²⁸ Abbott (1988) refers to professionals who provide services to “clients overburdened with material from which they cannot retrieve usable information,” be it “qualitative information” (e.g. the work of librarians, academics, advertisers, journalists), or “quantitative information” (e.g. accountants, engineers, statisticians).

(even if they run contrary to what the public defender perceives to be the “best” course of action); and (3) appease the anxieties and emotional turmoil of uncertainty.

Information as protection

In some instances, it can be decisive for a public defender to explain a technical juridical distinction to a client. While following the work of public defenders in Salvador who counseled people during their pre-trial custody hearings, I observed that they frequently explained technical legal distinctions to their clients prior to their hearing to inform their actions. Prior to attending the custody hearing itself, I would accompany and observe the public defender’s meeting in their office with each client. Before beginning each conversation, the public defender would take five minutes to quickly read the initial police report and would also ask their assistant to check their client’s prior legal history. On the first day of my observation of public defenders’ work in these courts, the public defender’s assistant, Mario, walked into the office as the public defender was in the middle of a client meeting, and interjected: “He has no previous convictions, but does have a case that’s ongoing, also for theft.” The public defender nodded and then turned to his client:

Public Defender: “Listen, when you walk into the courtroom, the hearing will start with the judge asking you a series of questions that she asks everyone. She’ll ask you for your name, address, if you’re married, that sort of thing. She’ll also ask you if you have any “priors.” You do NOT have priors.”

Client: “But I do.”

Public Defender: “No, you don’t. You have an ongoing case, but you haven’t been convicted of any crime before, have you?”

Client: No, I haven’t.

Public Defender: Right. Only convictions count as “priors.” Nothing ongoing counts, so don’t give the judge any ideas.

One of the primary objectives of pre-trial custody hearings is for the judge to determine whether or not a person who was arrested by the police *em flagrante delicto* should be held in confinement prior to their trial hearing date. In written law, this decision depends on the type of alleged criminal legal offense, as well as other considerations about the person’s prior legal history, including whether or not they were previously convicted of a criminal legal offense (Brazil 1941). As the public defender explained to his client above, having an *ongoing* criminal case that has not been concluded does not qualify as having a prior legal history, nor does any closed criminal case a person may have had in youth courts prior to reaching the age of 18. After the client left the room that day, the public defender explained to me that making this distinction for clients was really important before they step into their hearing:

These aren’t distinctions that a client is likely to be familiar with. It’s a technical one, but one that can matter a lot for whether a person is going to be held in confinement or not. A lot of clients answer the judge’s questions pretty sincerely. Maybe they say they have a

“prior” when they don’t. In other cases, they might even clarify that there hasn’t been a court decision yet, but that doesn’t matter. The judge doesn’t have time to look in the system to see if they have any ongoing cases, but if my client mentions it, it’ll inevitably come into play...even if technically it shouldn’t.²⁹

Public defenders can occupy a unique role as bearers of information, not only because of the type of information to which they have access, but also how quickly they can access it for their clients or families relative to other people. Certain elements of the “wheels of justice” churn painfully slowly, but other segments happen at lightning speed. Accessing the right kind of information *in time* can make all the difference for clients and their families:

I arrived at the courthouse in São Paulo’s Barra Funda at 10am and walked into the large office where all seven public defenders who defend people in pre-trial custody hearings were already glued to their computer screens reading the names and files of the people on their docket for the day who had been arrested *em flagrante delicto* by the police either that same morning or the night before. After saying good morning to everyone, I sat down in the chair next to Melina, the public defender who had agreed to let me shadow her for the day. Right away, Melina started sharing about one of the cases she was particularly worried about: “You see this one here? These two brothers, Rodney and Luciano, were charged with petty theft and they don’t have any prior legal offenses on record. There is no written legal basis for a judge to decree that they be held in detention until the trial date. The problem is, they declared they’re unable to pay the posted bail. If someone can’t pay this bail for them by 1pm today, they’ll both be transported to a detention center for sure.”

This particular day that I was observing Melina’s work was a Saturday, when the courthouse is only officially open until 1pm. Any payment done after that time would only enter the system on Monday—too late for Rodney and Luciano to avoid being sent to detention. Melina went on to say that any day spent in detention would be insufferable, and even if the bail is eventually paid at a later date “there’s no guarantee of how long it will take for him to actually be released from that hell hole.” I followed Melina as she rushed out of the office and asked a military police soldier to quickly speak with one of them before the judged started the hearings. The soldier quickly brought Rodney to speak with Melina in the hallway. He walked clunking in his feet that could barely stay inside his black sneakers because the shoelaces had been removed by the military police soldiers minutes beforehand. Cuffed with his hands laying at the front of his waste, he wore a dirtied white t-shirt ripped near his upper left shoulder, and muddied jean shorts. He looked at Melina, his eyes wide open, “*Doutora*, we didn’t steal anything, I swear. I’d never do this kind of thing. I don’t have a record, nothing, neither of us. *Really*.” Melina was running out of time:

Melina [public defender]: “We can’t talk about that right now. Right now I need to know: the police have posted your bail. Is there any way you can pay it?”

²⁹ Fieldnotes, Salvador, November 2017.

Rodney [client]: “We just don’t have that kind of money.”

Melina [public defender]: “What about your parents?”

Rodney [client]: “They don’t have that kind of money either.”

Melina [public defender]: “Let me still try. Do you know any of their phone numbers?”

Rodney’s voice and hands trembled, and he restarted reciting the digits three times as he tried to remember his father’s cell. Melina wrote it down, called the number and on the second try his father picked up. Rodney’s parents had already heard he had been arrested and were already waiting outside of the courthouse. They met her inside the courthouse to pick up the *boleto* to try to pay Rodney’s bail. “Normally,” Melina explained, “there are places to pay this *boleto* closer to the courthouse, but because it’s a Saturday they are closed. The closest place I can find is here.” Melina points with her finger to her cell phone screen to show them the address of the nearest grocery store³⁰ where they could pay the *boleto*. “But the online proof of payment won’t likely be represented in the system in time by 1pm when the court will close for today. So, your only chance of making this work is if you can come back to the courthouse in person before 1pm with the physical receipt of payment. I’ll take it to the clerk myself to show them you paid the bail on time.”

We all knew that getting from the courthouse to the grocery store to pay that bail, and then get back to the courthouse in time would be no easy feat, taking at least 45 minutes in regular traffic just one way, and only if they could also afford to pay for an uber. I imagined the line of people they might encounter on a Saturday at the grocery store also trying to submit some kind of payment of *boleto* (for utilities, rent, etc.), and them having to get lucky enough for people to allow them to cut the line. And, they’d have to make sure the machine would actually work and could actually print out the receipt. And even then, the uber back would be tight in terms of time. As I sat and observed Melina’s work in the other custody hearings that day, I kept wondering if Rodney and Luciano’s parents would make it back in time. At 12:51pm, they came running down the courthouse halls. Panting heavily, and with a drenched t-shirt, their father had to stop and sit in a chair along the hall to catch his breath, while their mother made it to Melina to hand her the *boleto* just in time.³¹

Informing clients’ decisions

Professionals can also provide “action recommendations” for their clients based on the information they possess (borrowing from Abbott 1988). Public defenders emphasize the importance of providing information to clients that will allow them to understand what is going

³⁰ Various types of payments are routinely made via electronic machines in publicly accessible venues (e.g. grocery stores, shopping malls) by scanning a physical bar code or inserting the payment code—from utilities, to rent, amenities, and in this case, bail.

³¹ Fieldnotes, São Paulo, December 2019.

on and to make decisions in a moment that for many may involve one of the most difficult dimensions of a person's life: "We work with the second most important thing for a human being: the first is a person's life, the second is their freedom."³² Clients must make decisions during the penal process that influence the eventual outcome of their penal case, including, the extent to which they will be subjected to state-sanctioned constraints and coercion. Public defenders emphasize the importance of providing them with information about the likely outcomes of different courses of action, both based on the technical-legal rules of penal procedure, as well as how different courses of action are likely to play out amid particular courtroom dynamics. Many aspects of the penal process can feel like an almost foregone conclusion, but a client will have to make decisions with important implications for their future. One of these instances is how they choose to approach their interrogation at trial.

Following all other witness testimonies during the trial hearing, the final testimony is made by the defendant in their "interrogation." During this interrogation, the judge will initiate a series of questions about their "version" of what happened, which will then be followed by questions from the prosecutor and then the public defender. The most central question that dictates the rest of the questioning is whether the defendant will choose to remain silent, confess to having committed the crime, or deny it. Crucially, in Brazilian law, defendants cannot be charged with perjury, which is justified on the basis of defendants having the right to all defensive means necessary to protect themselves (Brazil 1941). Deciding what to say or do during the interrogation, then, is a moment of critical strategy—so much so that public defenders and their client will leave the courtroom immediately before the interrogation to discuss what they should say, or not.

Throughout my observations in both Salvador and São Paulo, many clients would take the course of action their public defender also found most advantageous. However, in some cases, clients would choose a different course of action. As one São Paulo public defender shared:

There are times when a client refuses to confess. Sometimes a confession might be a person's only way to get a lower sentence, and I inform them of this, but they decide not to confess anyway. There are times when I get the sense that they really didn't do it, and I respect that, but sometimes I worry it's because they don't trust I'm on their side. And that's hard for me. I don't want to be paternalistic or authoritarian about it. They also have to feel like they're in control of their lives. But sometimes I also feel guilty for not pushing harder for them to confess because I know how much of a difference it can make.³³

In other cases, clients confess despite public defenders believing there was no advantage of them doing so. During one afternoon in which I was observing court hearings, I sat in one of the public defender offices in Barra Funda, waiting until the next post-indictment trial hearing would take place in the courtroom to which Clarice [public defender] was assigned. The office was shared between four public defenders, along with a total of eight legal interns who were their primary source of support. As I sat in the corner, three of the public defenders, including Clarice, quietly sat behind their computers reviewing the files for their upcoming cases, waiting

³² Interview, Public Defender 51, São Paulo, October 2019.

³³ Interview, Public Defender 17, São Paulo, October 2019.

for the clerk in each of their courtrooms to call them in to start. Suddenly, Maria, the fourth public defender, came storming in with her body tense, red-faced and shaking her head:

I can't believe this guy! He had *no* reason to confess and he did it anyway! All he had to do was remain silent and the case would have been dismissed for sure! The evidence was so weak and I could tell the judge was going to dismiss the case. I have no idea why he did that. We had a full conversation before the interrogation, there was absolutely no evidence supporting the prosecution, one of the police officers didn't even show up, and the prosecutor was clearly ready to let it go. I told my client that all he had to do was stay silent, but instead he confessed and now he's going to go to prison...for years!³⁴

During other interviews, public defenders highlighted similar instances. Though they were in a minority of cases they could be extremely memorable and frustrating for public defenders. Many recognize, however, that certain situations may just be beyond their control. Someone may have been “nominated as a scapegoat in a broader crime scheme and they have no choice but to confess;” another public defender shared having a client who wanted to “tell the truth and confess to make their mother proud;” another “to be able to repent to god.” As one public defender stated: “but it's my job to make sure they understand the implications of these actions. At the end of the day all I can do is be the bearer of information.”³⁵

Appeasing the anxieties of uncertainty

Poor people in many contexts are subjected to a “politics of waiting” in which they must endure an extended amount of time to obtain almost anything from the state (e.g. housing, medical services, welfare support) (Auyero 2011, p. 9). Such conditions compose an integral dimension of state domination over the poor and marginalized people (Auyero 2011). This includes the experience of being systematically excluded from information when poor people are caught in the clutches of the penal state – an experience of tremendous anxiety of all sorts. In addition to the physical pain, discomfort and harm people experience throughout the penal process, the lack of information, of not knowing, is a source of great turmoil for people subjected to it, and in many cases for members of their family. Even when it does little to alter their practical situation, providing information to people who otherwise lack access to it can therefore be important to mitigate the turmoil that penal processes instigate.

There is much that clients awaiting trial may not know in a given moment—about the status of their case, whether a trial date has been set, who is their judge, is there anything they can do, how their children are, etc. Public defenders emphasize that people's ability to access and communicate with them is a crucial means of accessing information to appease the anxiety of such uncertainty. For example, in both Salvador and São Paulo, routine public defender visits with clients are scheduled in each cities' detention centers. In both cities, public defenders emphasized these visits as critical for their clients, despite their meetings not always necessarily “making a difference in the actual outcome of their case.”

The ability of such information to appease anxieties and unrest is quite palpable. Brazil is infamous world-wide for the pervasiveness of large-scale organized rebellions of incarcerated

³⁴ Fieldnotes, São Paulo, September 2019.

³⁵ Interview, Public Defender 51, São Paulo, October 2019.

people, and among the primary sources of anxiety is the sense of indefinite confinement, especially given a deeply entrenched history of long periods of people being confined before going to trial. The lack of knowing if/when a trial date has been set is a basis of persistent insecurity. The importance of such information to quelling anxieties is pervasive even for the authorities who administer the city's detention centers. Indeed, during one of my visits to a pre-trial detention center in São Paulo, I observed how respectfully the prison guards and director received the public defender, Marco, I was shadowing that day. At the end of our visit, as we stepped back into the car to leave, I asked him if that treatment was common: "yes, it's quite common for me. The public defender can create other kinds of headaches for them for sure, but on these types of visits they know that the inmates will be calmer after I've visited. Not that these visits necessarily change much for their fate in court, but I think that just knowing what's going to happen next is already helpful for them. And we're uniquely positioned to bring that information to them."³⁶

Information is also important for family members. For example, one of the first things that public defenders who defend people in pre-trial custody hearings in Salvador do is call a family member or other personal contact of their client to inform them that their client has just been arrested:

Sometimes, informing my client's family that they were just arrested can be helpful for my client. Maybe they can come down in time to bring some sort of documentation that could help my client's case. Maybe they can help pay their bail, or even just bring their ID. But these situations are usually the exception. It's still an important part of my job, though, to inform them of what has just happened. A person important to them was just arrested in the last 24 hours and they may not even know yet. And, if they don't hear it from me, they may not hear from anyone in the court for some time. If he ends up in a detention center, the court might not officially inform them for weeks. They might have no idea where their son, father, boyfriend, etc. is...not even that he's facing charges. For all they know, he could be dead.³⁷

Family members also face challenges to obtaining information about the outcome of trial hearings. In written law, both pre-trial custody hearings and post-indictment bench trials are publicly accessible events; but in practice the family members of public defenders' clients are systematically excluded from such events in the overwhelming majority of courtrooms. In both cities, court hearings took place in small courtrooms (approximately 6 x 4 meters), with a rectangular table perpendicular to the judge's and clerk's table. The rectangular table in most courtrooms had room for the defendant at the head opposite the judge, and then room for two chairs on each of the longer sides of the table for both prosecution and defense attorneys. These rooms also had additional chairs lining two to three walls of the room. Oftentimes in the hearings I observed, I was the only person occupying one of these chairs. In instances in which they were occupied by additional people, they were most routinely one of two groups: military soldier "escorts" or law students granted permission by the presiding judge to watch a specific court hearing. Judges otherwise typically excluded people from entering the courtroom space.

³⁶ Fieldnotes, São Paulo, November 2019.

³⁷ Interview, Public Defender 23, Bahia, June 2020.

Most adamantly and consistently, this space was closed off to family members of the defendant—unless they were serving as a witness in the hearing itself. The judges who I interviewed in both cities emphasized that they did not find it appropriate to have family members in the courtroom: “they might start crying,” or “instigate too much emotion from the defendant that could cause a disruption” were some of the justifications expressed. I also asked public defenders about this implicit rule. Some lamented this exclusion, but nearly all agreed with the policy, raising concerns about how the presence of family members could jeopardize the outcome of their client’s case.³⁸

For families with someone being held in pre-trial detention, there is no way to learn from the defendant themselves what happened after the hearing—the military police soldier will immediately remove them from the courtroom and take them back to a holding cell. As a result, family members routinely go to the courthouse on the day of the hearing, waiting to steal a few seconds with the public defender to learn what happened, after having spent hours on a bus with multiple transfers to get there, often sacrificing a full day of pay to be there. During one of my court day observations in Salvador, I learned that the mother of one of the public defender’s clients had re-scheduled her heart surgery in order to be at the courthouse on the day of her son’s court hearing.

Humanizing poor people’s experiences

Dehumanization is the “perception of a person or category of people as socially irrelevant due to their less-than-human or not-at-all human characteristics;” that is, dehumanized people are those whose lives are perceived (by those who dehumanize them) as “socially meaningless,” which in turn can come to naturalize the routine exercise of gruesome violence toward human beings by authorities vested with the power to do so (Luft 2023, p. 326). Rationalization and bureaucratization facilitate the dehumanization of poor people subjected to penal state power. Penal state administration in modern states is oriented by written laws, rules and protocols. The carrying out of these protocols in routinized ways exerts various forms of violence towards the people who are subjected to them (Walker 2020). Rationalized procedures described in written laws obscure the harm and suffering these practices exert on people and can avoid the emotional horror that such practices may otherwise inspire in people. This “administrative veil” of penal bureaucracies, according to Pratt (2002), further strengthens the opaqueness of penal state institutions. It can also weaken recognition from state bureaucrats of the humanity of the people who are subjected to this administrative power and skew their (mis)understanding of the

³⁸ First, they too worry about the emotional disruption of their client, such as an “inability to compose themselves” that could be detrimental to their case. Especially for those in pre-trial detention, they go months without seeing their kin, and for some this can be especially emotionally intense. Second, public defenders raised concerns about how family members may be treated by certain judges and prosecutors. As one public defender said, “the judge started badgering my client’s mother.” Third, in both solicited and unsolicited instances, a family member may say something that could implicate their client’s guilt: “Some family members are brutally honest; and in the name of honor and morality may themselves speak out to show the defendant comes from a ‘good family.’ One time, a mother even said to the judge ‘I told him he shouldn’t get involved in that!’” (Interview, Public Defender 60, São Paulo, September 2019).

implications of their decisions for people's lives. Within this dynamic, public defenders occupy a distinct position exemplified in the following Salvador public defender's account below:

I once had a really intense confrontation with a prosecutor during a jury trial when I was working in the county of Feira de Santana. In the middle of one of his statements he said in front of the jury something like “ah, the public defender office shows up with this discourse of the right to basic protections, but it's not the public defender who's in the communities taking care of the victims. And that's when I got angry. The truth is that it *is* the *defensoria* that's on the side of the poor. In my country, the prosecutor office almost never represents the poor. In most cases, they represent the elite. Who's actually next to the poorest population? Who's close enough to feel the stink of simple people? Who is it that steps into the *favela*? Who is it that goes to the prisons? That's us. So when that prosecutor said that we don't worry about the victim and so we don't worry about the community, I remember I walked into the center of the courtroom in front of everyone, with fire in my belly. I was the only other woman [among court authorities] in the room. I was wearing high heels that day about this high [uses fingers to show a measure of approximately 5 inches]. I looked at the prosecutor and the jurors and said “I would like to say to the prosecutor “of justice” that contrary to what he said so dishonestly, it's the *defensoria* that has their feet on the ground with the poor.” And then, I slipped my foot out of my heel and put my bare foot on the floor. “It's the *defensoria* that has their feet on the ground in the *favela*, in the mud, in poor communities, on the side of the poor.” Then I stepped my foot right back up into my heel again: “And just as I am present there, I am also here with *you* on the same level, as equals, fighting here for my client.”³⁹

Like other court authorities, public defenders are people with authority and license to intervene in legal procedures. However, public defenders' interactions with their clients also become a basis on which they come to claim a unique source of knowledge and expertise in comparison to prosecutors and judges. It is on the basis of this unique knowledge and position that many public defenders emphasized their mandate to “humanize” poor people's experiences in the eyes of other court authorities:

Judges and prosecutors here in the city are very isolated. Most here in Salvador don't step foot into a prison. Yes, there is a judge who is assigned to step foot in the prisons here [for inspections], it's part of his specific responsibility. But all of the others, they don't have to step foot in a prison, and they don't. They can become very isolated working in their offices and don't have that experience in their day to day. They forget a lot of the time what it's like, what an incarcerated person goes through. I'll give you a very practical example. We have an issue with a policy here that's called the “*revista intima*.” The public defender office has taken on many cases about this and it's already helped in some facilities. But for a long time any woman visiting someone in a prison would practically have to go through a gynecological procedure to visit someone inside—not by a doctor, but by a prison guard, to see if there were drugs in her vagina. I don't have to elaborate how degrading that is. All of it. I've already seen an older woman be forced to go through that. I'll never forget that. I had to control myself hard not to cry that same

³⁹ Interview, Public Defender 62, Bahia, August 2020.

moment in the facility. But the thing is there are other ways of doing this, including using x-ray machines. I remember one day, though, that the prosecutor in the courtroom I worked started saying how absurd it was that the prisons stopped doing the *revista intima*. She said: “Even I have to do a *revista intima* in the airport for example. You just have to do it. Why not in prison?” I realized that neither she nor the judge knew what a *revista intima* was. They’d never seen it. They thought it meant a person is patted down over their clothes just like in the airport. So I told them “No, that’s not what a *revista intima* is.” And then I started describing everything a woman is forced to do. How she has to squat down, without any clothes, over a large mirror that’s placed on the floor, with her legs wide open.” The prosecutor and judge’s eyes got really big, totally shocked. And the military police soldier in the room just nodding his head, because I was right. I see every day how their lack of direct contact with that world totally distances them from reality.⁴⁰

In instances such as the one described above, humanization involves unveiling the grotesqueness of practices that are sanitized by written laws and protocols so far removed from court authorities’ everyday lives that they misunderstand how a state practice influences a human being at the most carnal of levels. In other words, some public defenders believe they should interpolate prosecutor and judges’ assumptions about the nature of certain penal state practices exercised toward clients; they do so to reveal them as unacceptable in relation to cultural understandings of “humane” versus “inhumane” action. Public defenders also emphasize the importance of reminding prosecutors and judges of the humanity of defendants themselves:

Part of my job is to bring the prosecutor and judge’s attention to other parts of the process: the person, not the paper. If I’ve ever been able to make a difference it’s been by being able to say in one way or another “Hey, let’s talk about the PERSON that’s here in front of us.” My main role is to try to humanize the process. I think most of my colleagues are also trying to bring our clients’ humanity to the process. And this can happen in many different ways. At the end of a trial, if the guy was convicted, or whatever the outcome is, I ask him if he’d like me to call someone from his family. The judge and prosecutor that work in my court are already used to this, but in other courtrooms they get surprised. He’ll say something like “I do, I want you to call my mom.” And then you see how the prosecutor reacts, like “whoa, that guy has a mother?” Yes, yes he does. “What’s your mother’s name?” I’ll ask. “Her name is so and so...” “What would you like me to say to her?” “Please ask her to visit me on Saturday, and let her know I love her.”⁴¹

Motivational drive and the fierce public defender

Public defenders’ perceptions of their mandate become crucial to their constructing of a professional identity and sense of significance to their role under conditions in which their formal role to provide “due process” and a “fair trial” described in written law is an “unachievable utopic ideal,” as one interviewee described. Several public defenders I

⁴⁰ Interview, Public Defender 9, Bahia, March 2018.

⁴¹ Interview, Public Defender 55, São Paulo, December 2019.

interviewed in Salvador and São Paulo went as far as to describe their practical work mandate—as harm reducers, information bearers, or humanizers—as a vocation: “being a public defender is a vocation for me; I’ve always identified with this being a job that serves the poor, that can defend people’s human rights.”⁴² Their perceptions of their mandate spotlight the different types of suffering and state control poor people experience throughout the penal process, and the *potential* ways in which they can support clients and their families from this professional position. However, public defenders’ perceptions of their role do not automatically translate into action.

Within their particular work constraints, professionals also come to develop their own sense and measures of excellence (Hughes 1984). For legal aid workers, rather than measuring their performance in terms of penal outcomes, studies show that defenders may instead redefine their professional ideal in relation to motivational drive (Weiss 2005; Wice 2005). Public defenders’ conception of the “good public defender” in Salvador and São Paulo further support this dynamic. The most distinctive measure of a “good public defender” across both jurisdictions and in all three different stages of the process was their level of *motivation*. As one public defender who worked in São Paulo’s common crime post-indictment courts elaborated:

There’s the person who doesn’t even worry about each individual case. They write up a “model,” a standard argument for each one. They write up an appeal argument without even listening to each person’s statement, because in public service you can easily get away with doing very little. That person, well you can’t get rid of them because after those first three probationary years there’s no way. After your probationary period no one is watching over you, no one is really going to be able to get rid of you. Man, you can basically do whatever you want. You can very well just write up a generic argument. Write up a model argument for every drug trafficking appeal you submit. A model for appealing any robbery conviction that works enough to cover about any case. Just change the name of the person on the file and do it any which way. That’s a terrible public defender and they exist. I think it’s a minority of them, but still, it’s not just one. There are several. Or the kind of person who who kicks the case further down the road. When you get a case where a person is in detention, well you have to resolve that case right away. But another case, that person is on conditional release so they put it off. But it’s never okay for a person to be criminally charged. The sooner you can resolve any case the better. But they put it off, try to hand it off to another colleague, they aren’t even worried. They just want to go home early.⁴³

In many interviews, public defenders described similar concerns to those described above as characterizing the “bureaucratic” public defender, a persistent risk in their profession. In contrast to the passive bureaucrat, the “good public defender” was described as a person with persistent motivational drive in the face of forces that disadvantage them and their clients throughout the penal process. At the end of most of my interviews, I would ask each public defender if they could describe one colleague in particular who they considered to be exemplary of a “good public defender”; in other words, “the person they would most want to have defend them” if they were facing state prosecution themselves. In some cases, the person they describe

⁴² Interview, Public Defender 13, São Paulo, September 2019.

⁴³ Interview, Public Defender 45, São Paulo, December 2019.

self-identified as a “vocational public defender” during my interview with them. In other cases, however, a “vocational public defender” would choose a colleague who argues vehemently against this very association:

That word is sometimes used to define the “good public defender” but it’s also a very dangerous expression. I don’t use that term, “vocational,” but a lot of people do. Why don’t I use it? Well, because that word “vocation” is based on the assumption that there exist people who naturally already had something intrinsic to them that makes them better than others and more prepared to be public defenders. But really, the “vocational public defender” is the one who thinks of himself as the *bonzinho* (“good guy”), is better than other people, and charitable. Even though they get a salary for what they do, and today it isn’t a low salary [laughs]. There are other words that are similar, like “*defensorar*,” like the verb of being a public defender. It’s the same idea and it’s dangerous. I shared with you before that back in my time starting in the office I was the only one among my colleagues who wanted to be a public defender from the beginning. But the fact is, there are people who joined the office who didn’t want to be public defenders at the time but today they are excellent public defenders. Other people who have since entered the office and said they wanted to be public defenders from the start, but today, well, they aren’t very good public defenders in comparison to those others who I mentioned just now.⁴⁴

I observed this sort of “politics of vocation” (my term) among public defenders in both cities, which typically corresponded to different personal affinities and friend groups. The association of vocation with the good public defender, or not, oftentimes corresponded to broader personal affinities and friend groups among colleagues. Over the course of my observations in different offices and courtrooms, I observed how these friend affinities frequently corresponded to distinct support relationships—from who a public defender sought in moments of heightened frustration, to their “go-to” person for exchanging technical legal arguments/suggestions in challenging cases. However, these differences in understanding of vocation did not necessarily correspond to differences in the most central characteristic of what makes a “good public defender.” It must be someone who is “*aguerrido*,” or “fierce”:⁴⁵

He’s a public defender who is both very open to dialogue with judges and prosecutors but also extremely passionate and dedicated to what he does. He doesn’t easily accept any violation of a person’s rights and he always takes on an active defense. Theory and practice are consistent with him. He always does his best to face any challenges. For you to have an idea, during this moment of the pandemic, my problem with him in this moment is that we aren’t doing in-person meetings with clients because of the public health crisis. But he still wants to do in-person meetings with clients. He thinks that if a person who is incarcerated has to face these risks every day, their public defender should have to confront those same risks with them. So I’m not agreeing with his position on this

⁴⁴ Interview, Public Defender 53, Bahia, June 2020.

⁴⁵ This fierceness is similar to the “zealous” motivational drive described by public defenders in Wice’s (2005) study in Essex County.

in particular, public health is most important in this moment, but I still think it captures well his point of view.⁴⁶

For public defenders, what they consider to be “good days” are less common than “bad” ones. However, not all good days are necessarily due to their own efforts:

For me, any day where my client isn’t going to be sent to prison—whether it’s because their case was dismissed or because they were given a less punitive sentence instead—all of these scenarios are good days in my book. I can’t say that all of those outcomes are my doing. Sometimes the victim just didn’t show up, or the police evidence was just weak and the judge was going to dismiss their case anyway.⁴⁷

While not all good days for their clients are necessarily due to public defenders’ work, making any kind of difference involves approaching their work with constant drive. This feeling of “making a difference” can take on many forms:

The best days are when I’m able to get some kind of justice for a client. A situation that seemed almost impossible and I was able to change things. Or when my client is visibly anxious and I can help him feel calmer. When I can help someone understand something about their case, even if they don’t end up agreeing with me, but when I can make a difference in some kind of way.⁴⁸

By the nature of working within a process that public defenders in both cities routinely emphasized as one of tremendous injustice, even the most fierce public defender must deal with a creeping sense of impotence. To do so, motivational drive comes to serve not as an explainer of outcomes, but as a measure in itself of the good public defender, who can know they’ve done everything they can:

In the past, I used to cry a lot. But I’ve since gotten used to the feeling I get, being frenetic is a characteristic of mine, it’s my way of being, but I don’t see that as a condition of stress. I’ve learned to deal with things better. Something that used to keep me up at night doesn’t keep me up at night anymore. Since I do things the correct way, if there was an injustice, I can feel like I didn’t contribute to that. I don’t do anything halfway in my work, I try to challenge everything that I think is wrong within what’s possible in my work. But again, I’m not a superhero. I’m a public servant, I have my limitations, be it because my work has constraints or because I physically have limits. I’ll take things to those limits, but I won’t get frustrated when I can’t change something. I try to keep myself calm by doing my work in a way that I know that I did everything I possibly could within my own limits.⁴⁹

⁴⁶ Interview, Public Defender 54, Bahia, June 2020.

⁴⁷ Interview, Public Defender 29, São Paulo, October 2019.

⁴⁸ Interview, Public Defender 22, São Paulo, November 2019.

⁴⁹ Interview, Public Defender 22, São Paulo, November 2019.

Fierceness was described by public defenders as a key measure of excellence in carrying out their professional roles as harm reducers, information bearers, or humanizers. However, not all roles were emphasized equally by public defenders. As elaborated in Chapter 2, in both Salvador and São Paulo each public defender is assigned to provide legal aid to poor people in one of three stages of the penal process: in pre-trial custody courts, post-indictment courts, and penal execution courts. Even for the most fierce of public defenders, not all positions offer the same possibility for them to carry out each of these three distinct mandates elaborated above. Rather than merely a question of personality or ideology, different work conditions inform the extent to which public defenders emphasize certain roles. In both cities and across all stages, public defenders most frequently emphasize their role as harm reducers, given the technical legal expertise at their disposal to provide such a service to clients. There is greater variation in terms of their emphases on bearing information and humanization, however. These differences are apparent not only between public defenders who work at different stages of the penal process within a specific jurisdiction, but also differences in public defenders' perceived mandate among those who work in the *same* penal stage but in different jurisdictions.

The most significant contrast in perceived mandate was between public defenders who work in penal execution courts in Salvador and São Paulo. In São Paulo, public defenders in the penal execution stage most centrally understand their role as harm reducers, through their “accountant-like” (Godoi 2017) attention to the written rules that dictate a convicted person’s sentencing progression. Their perceived role as humanizers and informers is much less apparent given the nature of a work routine that largely designates them to computer screens in their courthouse offices, having little routine interaction with clients or prosecutors and judges. By contrast, public defenders in Salvador who work in penal execution courts insist on the importance of their role as information bearers and humanizers. With most of them occupying offices within Salvador’s penitentiary complex, they highlight their responsibility as the most immediate source of information for people carrying out their sentence behind bars; and also as daily witnesses and testifiers of the horrifying overcrowding, insalubrity and repression of life behind bars for their clients.

Conclusion

Written rules and professional codes of ethics define the formal mandate of a professional and their role in relation to their clients. Indeed, it is precisely this official role that grants them license to access certain resources, people or spaces that others cannot in order to provide their service (Hughes 1984). Research on legal aid professionals shows that within their work conditions, penal outcomes are influenced by many dynamics far beyond their control—sometimes even the occasional “good” outcomes. Any kind of influence on clients’ lives still unquestionably involves great determination and *fierceness* against unrelenting forces. This emphasis on motivation over outcome, then, becomes the key measure of professional responsibility. On the one hand, fierceness is the only means to potentially influencing clients’ lives in relatively positive ways when it is possible to do so. On the other, in many instances when a sense of impotence comes creeping in, carrying out their work with a relentless drive comes to offer some a minimum of solace that their client’s suffering was “out of their hands.” However, fierceness, or zealousness, refers to a motivational drive that can be oriented toward different aims. In this chapter I demonstrate the importance of extending inquiry to examine toward what end legal aid workers believe their motivation should—and can—be oriented.

This analysis advances existing studies on legal aid by unpacking the distinction between “narratives of self” (e.g. Arriagada 2023) and the roles legal aid workers perceive they can play within different work constraints. Among the few studies on legal aid workers’ perspectives, studies have highlighted qualitatively different “motivations” and narratives of self that legal aid workers use to give meaning to their work. Scholars emphasize these dynamics as important to understanding what drives legal aid workers to provide services to their clients, and suggest that they may also contribute to differences in level of zealousness (Weiss 2005; Wice 2005). Other research focuses on identifying the obstacles to legal aid worker zealousness, or a “vigorous defense” (Eisenstein, Flemming and Nardulli 1999, p. 287 - 289). Building on this work, I bring attention to variation in the different roles toward which this zealousness may be oriented.

To be sure, the roles legal aid workers believe they can play for their clients, and the narratives that motivate them to provide services to their clients can have much overlap. But they are nonetheless distinct. I show how explaining the latter requires attention to the people, resources and spaces that characterize legal aid professionals’ concrete work practices. Put differently, this analysis demonstrates the importance of making the following distinction: to what extent is the type of service the legal aid worker provides to their client in a given context explained by a lack of zealousness? And, to what extent is it explained by differences in what even the most zealous of legal aid workers perceives as possible for them to provide to their client given their position in relation to clients and court authorities under certain work constraints?

IV. PUBLIC DEFENDERS IN ACTION

Chapter Summary. How do legal aid professionals influence penal court processes? Court authorities classify people and behaviors in ways that orient how and toward whom states exercise penal power. I argue that legal aid workers seek to mitigate the punishment their clients face through strategies to influence interpretations of their client's 'criminality' and the 'just measure' of state force. It is through these strategies that they both mitigate the harm individual clients face while also contributing to court routines that naturalize the selectivity of penal state practices. In this chapter, I focus on public defenders who counsel poor people facing prosecution for drug trafficking in São Paulo, which accounts for one of the largest portions of people incarcerated in Brazil's largest metropolis. I dissect three strategies they employ: instigating doubt, contestation, and negotiation. Public defenders face many shared challenges in their work, yet the same public defender may employ distinct strategies within different courtrooms due to differences in the horizontal and vertical constraints of each courtroom's interpretive terrain. By analyzing why the same public defender employs distinct strategies in different courtrooms, I identify two key dynamics that influence variation in their strategies: (1) prosecutors' and judges' relative (dis)trust in the validity of police work and (2) public defenders' perceptions of the likely (mis)alignment between trial judges' interpretations and those of higher courts.

Introduction

Over the last three decades, countries across the Latin American continent have been undergoing the most dramatic transformation in penal procedures and institutions in two centuries, backed by discourses to advance ideals of "due process," "rule of law" and "democratizing criminal justice" (Langer 2007). These initiatives have been described by legal reformers as a transition from inquisitorial legal procedures inherited from Portuguese and Spanish colonial rule to adversarial models of managing and judging people in penal court. Written inquisitorial procedures have indeed denied people access to formal protections from abuse of state power for centuries (Duce 2009; Kant de Lima 1995; Santos 2024, p. 7). However, empirical analyses of court processes amid ongoing reforms demonstrate that implementation of certain procedures has "occluded the substantive rights such policies initially purported to advance" (Akotirene 2024; Bergman and Fondevila 2021; Ciocchini 2017; Santos 2024, p. 7). Importantly, the expansion of legal aid services has been a central initiative of such reforms. The expansion of legal aid in Brazil has been particularly swift and robust, but how do public defenders actually influence these penal court processes?

Although penal processes are punitive for all who are subjected to them (Feeley 1979), legal aid workers' technical legal training makes them contenders to mitigate the state-sanctioned punishment their clients face. Legal aid work can come to seem "futile" (Godoi 2019) as they face many challenges to defending their clients' interests in court. Yet their efforts can still impact court processes and outcomes to some degree for their clients (Wice 2005). Indeed, the concern for zealotry in existing scholarship (Clair 2020; Eisenstein, Flemming and Nardulli

1999) is based on the assumption that legal aid work does still make a difference for clients in some way. Yet how people and behaviors are interpreted and classified into written law are influenced by various arbitrary forces within different courtrooms (Eisenstein, Flemming and Nardulli 1999).

Within the interpretive terrain of individual courtrooms, I argue that legal aid workers seek to mitigate the punishment their clients face through their strategies to influence interpretations of their client's 'criminality' and the 'just measure' of state force. It is through these strategies that they both mitigate the harm individual clients face while also contributing to court routines that naturalize the selectivity of penal state power.

To develop this argument, I examine the strategies of public defenders in São Paulo who defend poor people facing state prosecution for allegedly selling illicit drugs (i.e. drug trafficking). Brazil's anti-drug legislation is significantly elastic both in terms of the discretion it confers onto judges and in terms of its logical ambiguity (Semer 2019; Strano 2018). The horizontal and vertical constraints of public defenders' interpretive terrain are especially dynamic to clarify when and why legal aid professionals employ certain strategies or not. Moreover, the organization of public defender work in post-indictment courts is such that each public defender has a strong sense of the commonalities and uniqueness of their assigned courtrooms relative to those of their colleagues. These conditions are analytically effective for bringing to fore the practical and relational factors that influence struggles with prosecutors and judges over how to interpret and classify their clients throughout the penal process.

First, in the following section I situate São Paulo's public defenders' work within the broader context of punitive drug regulation in Brazil. Then, I dissect three strategies public defenders employ to mitigate punishment for their clients in court: instigating doubt, contestation, and negotiation. In so doing, I highlight the creative interpretive labor involved in legal aid workers' navigating of the arbitrary forces that produce legal power in different courtrooms. I also identify two dynamics crucial to explaining variation in their strategies between different courtrooms: (1) court authorities' relative (dis)trust of the validity of police work, and (2) public defenders' perceptions of the likely (mis)alignment between trial and appellate judges' interpretations of written law.

Selective enforcement of anti-drug legislation in São Paulo city

Brazilian laws have regulated the possession, use and distribution of psychoactive substances since the early 20th century (Boiteux 2011; Strano 2018); yet the beginning of the 21st century ushered in an unprecedented number of people being arrested on the basis of them violating anti-drug policy. Over the past three decades, Brazil has become both a prime destination and transit site for illicit drug commerce; today, it rivals the United States as the largest consumer market for cocaine worldwide, traversing all economic segments of Brazilian society. Given its prime geographic location, it is also as a key transit node for distributing illicit substances travelling from producers in Central America to consumers in Western European countries (Alves and Alves 2015; UNODC 2013). Political leaders across party lines have performed a relentless commitment to tougher penal practices against organized crime associated with illicit drug commerce as a strategy for shoring up legitimacy, amid widespread public anxieties about violence caused by complex forces (Ghiringelli and Azevedo 2015; Lessing 2017; Nunes 2015). Aggressive deployment of policing capacity has since resulted in a boom in the number of people being managed and processed by local courts, with alleged violations of

anti-drug legislation among the most frequent charges people face. In 2018, drug law violations (possessing illicit drugs for use or distribution) were the sixth most common type of practices for which people faced penal state charges (CNMP 2018).

According to Brazil's 2006 Drug Law, a person convicted of drug trafficking faces a minimum prison sentence of five years. However, for the first time since 1940, this same law *removed* possession of illicit drugs for personal use from the category of legal offenses punishable by incarceration; instead, they were to be diverted to drug rehabilitation programs (Boiteux 2011). Yet since 2006, the number of people incarcerated *increased* across the country at an unprecedented rate; and the portion of people behind bars awaiting trial or already convicted for drug trafficking nearly tripled, going from composing 12 percent in 2005 to 35 percent of the total incarcerated population by 2015 (surpassed only by property crimes) (DEPEN 2014, 2015; Nunes 2015).

The overwhelming majority of people targeted by policing authorities are neither the primary operators nor benefactors of these illicit markets, which thrive through a web of clientelistic relationships among heavily armed *comando* organizations that directly manage illicit operations, private actors, and state authorities at various levels of political power (Arias 2006; Grillo 2011; Lessing 2017; Willis 2015). Instead, people arrested and detained by policing authorities under charges of drug trafficking are overwhelmingly poor, and they disproportionately identify as *preto* ("black") or *pardo* ("brown" or "mixed race") (Alves 2018; DEPEN 2014). Moreover, incarcerated people are driven—sometimes even *forced* by state prison guards themselves—to become affiliates of *comandos* as a means of survival and order behind bars; this strengthens the very organized crime groups politicians purport to target, while further associating violence with poverty and ethno-racially marginalized people (Dias and Darke 2016; Santos et al. 2021).

The difference between being charged with illicit drug possession for personal "use" versus for "distribution" has profound implications for how people are managed by state institutions. Yet legal guidelines are vague and provide no specification of quantity of drugs or other clear indicators as basis for distinction. Thus, the occupational actors mandated to enforce and apply the drug law are granted broad discretion in who they target and how they interpret people and classify them (Semer 2019; Strano 2018).

Most people charged by the police for drug trafficking are not arrested following police investigation of Brazil's elaborate system of illicit commerce; instead, like most types of police charges (except for "crimes against life") they are based on *em flagrante delicto* arrests. These dynamics are especially salient in the state of São Paulo, the most industrialized of Brazil's 26 states and largest contributor by far to the country's economic wealth. It is also the epicenter of illicit commerce (Abreu 2017), and home to the most powerful *comando* operating illicit drug markets in the country: the *Primeiro Comando da Capital* (Manso and Dias 2018). In addition to the weak administrative capacity of local civil police organizations mandated to conduct criminal investigations in São Paulo, low-paid policing authorities are in close and persistent contact with *comando* factions. These circumstances benefit those among their ranks interested in the spoils of illicit markets; but it also becomes a systematic "occupational consequence" that leaves lower-level officers navigating a balance with groups for their own survival due to lacking a means of "protection from the violence they are meant to control" (Willis 2016: 81-2).

Together with pressure from political authorities to more aggressively enforce anti-drug policies, over 92 percent of cases are based on *em flagrante delicto* arrests, with the majority made during military police patrols in economically disadvantaged and socially marginalized

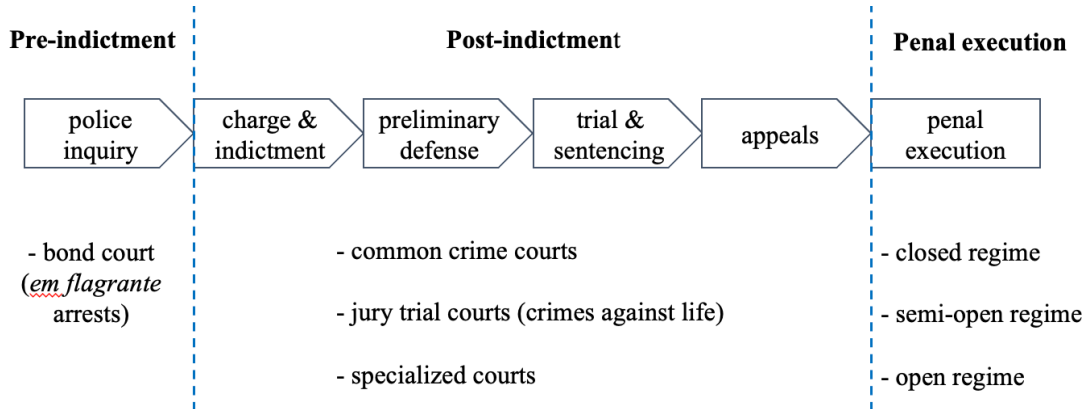
neighborhoods of disproportionately *preto* and *pardo* people (Alves and Alves 2015; Semer 2019). However, whether a person charged with trafficking by the police will be convicted, and how they will be punished if they are, depends on the evaluation and interpretation of court authorities.

The largest portion of people facing criminal charges for drug trafficking in São Paulo are processed in the city of São Paulo's penal courthouse in the Barra Funda neighborhood; this is the largest courthouse in all of Latin America. An estimated 8,000 people circulate throughout this courthouse each day—from court authorities and staff, to police, defendants and their families, witnesses, victims, and prison security officers. In the morning, clerks and court staff organize the dockets for the day in each courtroom, preparing for back to back trial hearings in the afternoon. In the back of the courthouse, 8 to 14-wheeler trucks pull in from transporting people from the city's 17 detention centers. After being unshackled from the metal bench that lines the inside of these trucks, people in beige uniforms, and white flip flops step out in single file. Military police soldiers order them to remove all of their clothing and inspect every part of their body behind a screen. Just a half hour before the first trial hearing at 1:30 in the afternoon, this group of approximately 200 people are handcuffed to one another in groups of three; they are escorted upstairs and detained in holding cells along the hallways of trial courtrooms. A steady flow of hundreds of people line up to pass through security in the front courthouse entrance, including families and defendants (not in pre-trial confinement) who are anxious to try to speak with their attorneys before their hearing.

People facing prosecution for drug trafficking are processed in one of the courthouse's 31 "common crime" penal courts, or *varas singulares* (See Diagram 3 below for sequence of practices in post-indictment courts). These courts manage most cases for which the minimum punishment is set at two years in prison or more—except "crimes against life" which go to trial by jury; it is therefore within these courts that people face among the state's most coercive modes of punitive power. Drug trafficking cases are among the three most common types of legal offenses processed in these courts (together with robbery and theft) (DPE-SP 2019). Different from jury trials, in these types of trials, a defendant's case will be decided by bench trial,⁵⁰ where the judge is the primary arbiter—both whether they will be convicted and how they will be punished if they are. Also present is the prosecutor who is accusing the defendant of drug trafficking based on the police report. Another key court actor is the defense attorney, who is responsible for counseling the defendant over the course of the trial. With the overwhelming majority being poor, public defenders provide legal counsel to most people in these courts (estimated 70 percent) (DPE-SP 2019).

⁵⁰ Barring exceptional cases when the bond court judge does not legitimize a police arrest, prosecutors in these penal courts choose to formally indict a person. The person facing prosecution must then have a written statement of preliminary defense submitted to the court by a defense attorney. Then the judge will evaluate the proposed interpretations of the prosecutor and defense attorney. A small portion of cases may be dismissed by the judge at this stage, but for the majority an trial hearing date will be set (CNMP 2018).

Diagram 3. Sequence of court practices (pre-indictment, post-indictment, penal execution)



In the following sections, I elaborate three strategies public defenders employ to mitigate the punishment their clients face within their courtroom’s interpretive terrain: instigating doubt, contestation, and negotiation.

Instigating doubt

A key strategy for public defenders is to instigate doubt in the minds of the judge about their client’s guilt, or, concerning other potentially compromising narratives about their client. In drug trafficking cases, like most common crimes, prosecutors have little capacity to investigate on their own, so their basis of prosecution relies nearly entirely on the materials and statements collected and organized by policing bureaucracies at the time of arrest. Once the case reaches trial, these same two police officers are required to provide witness testimony at the hearing. Police written statements and their subsequent eye-witness testimony are therefore a key basis of conviction in the majority of cases; and they are the sole witnesses for the prosecution in an estimated 90 percent of drug trafficking convictions (Semer 2019). Public defenders’ strategies to avoid their clients’ conviction therefore focus on identifying opportunities to discredit or “deconstruct” police accounts. During my interview with Veronica, for example, she emphasized a typical situation in a drug trafficking case, where arrests resulted from a police raid in an area known to be a point for selling illicit drugs. As she explained:

Sometimes for example there’s a police operation, with five police officers, say. Sometimes they arrested two people, and sometimes it wasn’t even the police officer who arrested him who ends up writing the statement and showing up in court. So the first question I ask the police officers is if there weren’t more people at the scene. Who was there in the car with them? And then you have to deconstruct a whole narrative, like, “Look, there had to be more people in the car. There was a police raid, right?” [...] “Who was involved in the operation? Who else did you see? Where is the drug *user*? You didn’t

arrest them too? What did the user look like?” Try to deconstruct what the police has said.⁵¹

However, successfully instigating doubt about police accounts of their client and their behavior is the exception. Indeed, 85 percent of drug trafficking cases in São Paulo result in conviction (Semer 2019). Public defenders emphasize a generally high bar for instigating doubt in the mind of most judges. There is a strong tendency for judges to attribute validity and trust to police work, oftentimes explicitly justifying their conviction in their written decisions on the basis of the honor and seriousness of their work (Semer 2019).⁵² More effective ways of instigating doubt can involve seeking materials, information or people who can give eye-witness testimony of what happened. In some cases, public defenders try to challenge police allegations that their client was in possession of illicit drugs. In others, they might argue that their client *did* have drugs on them, but that they didn’t intend to sell them. Rather, they were going to use the drugs for themselves – if successful, this would absolve them of a drug trafficking conviction, and therefore avoid any potential sentence in prison. Take my observations during Júnior’s hearing as an example:

I sat up against the back wall in the 6x4 meter courtroom. Three of Júnior’s family members had provided testimonies; one by one they sat in the plastic blue chair in front of the judge’s clerk table. His mother spoke about Júnior’s long struggle with using crack. His aunt shared how she took Júnior to church every week on Sundays and also to a Thursday night church meeting for people who specifically have challenges with addiction, but “he just couldn’t stop.” His grandfather shared how it had gotten so bad that Júnior sold everything he could get his hands on at home: “He even sold all of the dishes and silverware in our kitchen to be able to buy drugs.”⁵³

This case turned out to be among the rare cases I observed throughout my fieldwork in São Paulo where a person was ultimately absolved in a drug trafficking case (i.e. not convicted). But this kind of case was an exception for many reasons, which the public defender herself acknowledge in my interview with her just one day after this observation. First, “We typically aren’t able to do much to construct the defendant’s version.” Public defenders attribute this to lacking resources to actively seek out materials or witnesses; amid nearly back-to-back trial hearings, preparing for them, and keeping up with the paperwork of the relentless flow of cases (TJ-SP 2019).

Time constraints are also a significant obstacle in legal aid that influences decisions about how to approach each case (Backus 2006; Bogira 2005; Weiss 2005).⁵⁴ Indeed public defenders in São Paulo work under many resource constraints, especially in terms of time. With over 90

⁵¹ Interview, Public Defender 61, São Paulo, December 2019.

⁵² See Semer’s (2019) analysis of court verdicts in drug trafficking cases in eight Brazilian states for elaboration on the content of judges’ written verdicts and justifications for conviction with emphasis on the “honor” and “seriousness” of police work.

⁵³ Fieldnotes, São Paulo, November 2019.

⁵⁴ Time and resource constraints of public defender offices in the U.S. context have been a central theme in the literature that focuses on obstacles to achieving ideals of “effective legal counsel” (e.g. Backus 2006; Bogira 2005; Weiss 2005).

percent of prosecutors' charges going to trial, hearings are the most time-consuming part of public defenders' job. Hearings are routinely scheduled in the afternoons from Monday through Thursday, and in some courts also Fridays, with about 25 hearings each week. There are an average of five scheduled hearings per day in each courtroom, beginning at 1:30pm and ending by 6:30pm. Public defenders counsel people in three to four of the scheduled hearings for their courtroom, averaging one hour per trial. When they're not in hearings, public defenders are mostly in their offices managing cases—writing preliminary defense arguments, petitions, appeals, and writs of habeas corpus. As they weave between their office and the courtroom throughout each day, two university law student interns are their primary source of assistance (in contrast to prosecutors, who have up to three interns and also a well-paid legal assistant with a law degree). They also have very little time with their clients before the day of the hearing, and even when they do, they often times do not have the resources to go after the lead. The availability of witnesses and materials therefore largely depends on clients' family members, like in the case of Júnior—whose family actively sought out the public defender's office—or on the initiative of clients themselves.

However, having more resources would far from resolve public defenders' challenges because they are also constrained by the broader dynamics of social conflict that structure their possibilities for action. Many people who could potentially serve as witnesses for their clients fear coming forward to testify. On the one hand, some fear repercussions from the *comando* groups that establish order in many poor communities. On the other, people fear the state itself. As one public defender explained:

If a person already has a criminal case history themselves, they don't want to appear in the courthouse. Or if they live in a neighborhood where drug trafficking is pervasive, they know that the police will continue to patrol the area and they're afraid to come to court for fear of being recognized later [in the neighborhood] and face retaliation.”⁵⁵

Overall, public defenders share many common challenges to instigating doubt across São Paulo's courtrooms—from scant investigatory resources, time constraints, and defense witnesses' fears of coming forward to testify in court. However, their strategies and outcomes to instigate doubt about their clients do still vary in some important ways. One of the most significant considerations is how a judge and prosecutor are likely to perceive the validity of police work. Public defenders do not always find potential defense witnesses' fears of state authorities unwarranted. A defense witness can be decisive for a client's absolution in one courtroom, but in others, they face a prosecutor or judge who attributes nearly unquestionable validity to police work.⁵⁶ Public defenders feel a strong duty to inform potential witnesses of the risks they may face in certain courtrooms. Take for example, my interview with Renato:

What a good defense witness usually comes to say is something like, “I saw the police approach and the person wasn't with any drugs on them,” or “I saw the person just before the police approached them and they weren't selling anything.” Something that in some way supports my client's defense. But many judges and prosecutors see that with a lot of

⁵⁵ Interview, Public Defender 56, São Paulo, November 2019.

⁵⁶ See Jesus (2019) for elaboration on how police testimonies in *em flagrante* cases are central to the discursive construction of “juridical truths” in Brazil.

resistance. There are some judges that already in that same moment charge the witness with false testimony on the sole basis of their testimony contradicting what the police is saying. So it's not a question of analyzing who has presented a more plausible or truthful version. From the moment the witness contradicts what the police is saying, they may already be treated like they're committing perjury. This happens in a lot of courtrooms.⁵⁷

Far from going in blind, public defenders typically have a strong sense of whether putting a witness on the stand could help or jeopardize their client. This is connected to their generally strong sense of the interpretive terrain of their particular courtroom, and also how it compares to others. Each of these 31 common crime courts has an average of 4,000 active cases, managed by two permanent judges, each of which presides over one of the two courtrooms that compose each of these courts (TJ-SP 2019). Similar to judges, one public defender is designated to each courtroom. Each public defender therefore shares a courtroom with the same judge throughout every day of the week, which allows them to develop a strong sense of how their judge rules in different types of cases, including the level of scrutiny they are likely to apply to police testimonies.

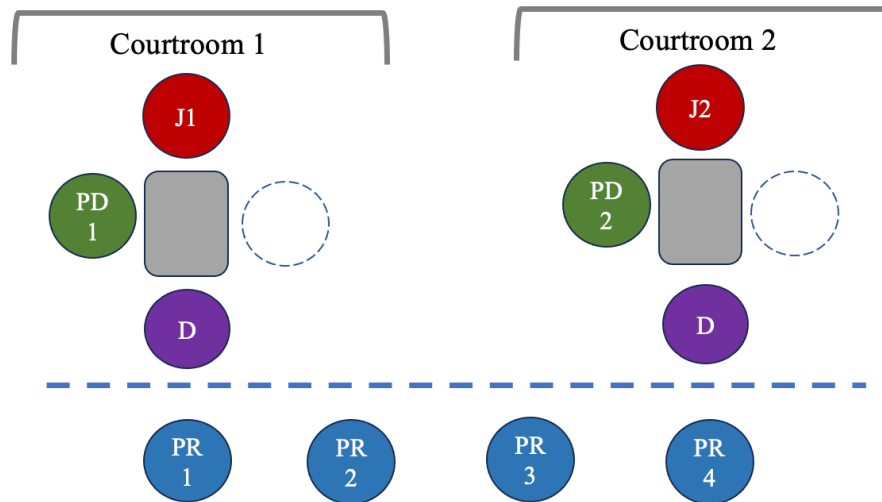
Public defenders also develop a strong sense of the perspective of the judge in the other courtroom within their court. With only two extra substitute public defenders to cover absences across these 31 penal courts (or 62 courtrooms), working the dreaded “double docket” when a colleague takes vacation time or is out sick is a routine occurrence. On such days they take on the cases *and daily hearings* of both courtrooms in the same court (each public defender takes on a double docket at least once a month, for a few days or even weeks). Public defenders therefore come to have a strong sense of the extent to which each judge's perspective is similar or different than the judge in their own court:

I regularly get off of work later than my colleague in the other courtroom. In her courtroom, a hearing might end in less than 20 minutes from start to finish. The judge there doesn't ask the police a lot of questions when they take the stand to give their testimonies. My judge, well, he goes into every little detail in his questioning of the police officers, the distance from which they observed my client, what they witnessed—did they see the drugs held in my client's hand? Or were the drugs positioned somewhere near him? Etc. It's pretty common for a hearing to take 45 minutes or longer to get through. He's more scrupulous about inconsistencies with the police. A defendant is much more likely to get off with my judge.

In contrast to judges, prosecutors work between both courtrooms throughout the week. Four prosecutors are designated to the same court, and they rotate between the two courtrooms for trial hearings scheduled throughout the week. Public defenders' strategies therefore may not only vary between different courtrooms, but also within the same courtroom on different days. (See Diagram 4 below). Even with a scrupulous judge, public defenders must anticipate the potential risks of certain prosecutors still charging their defense witnesses with perjury, for example.

⁵⁷ Interview Public Defender 41, São Paulo, September 2019.

Diagram 4. Designation of court assignments throughout the work week



Not all public defenders will have the same “style” of defense for their clients (Alschuler 1975; Skolnik 1967).⁵⁸ Moreover, no case is ever exactly the same to fully explain differences in case outcomes. Precisely for this reason, the perspective of each public defender is useful to understand how the outcome could have been otherwise for a particular client (i.e. the counterfactual). During the months in which I observed different public defenders working in these courtrooms, they would often explicitly share with me after a case, or at the end of the day, their frustration that their client hadn’t been assigned to “the other courtroom.” Or, by contrast, emphasized that they were “fortunate” that they hadn’t been. With one public defender, Rafael, he would frequently text me *in the middle* of the trial hearing itself reflecting on how a case would have been different in the courtroom next door.

Probing public defenders’ strategies to instigate doubt is useful to identify important differences in the likelihood of avoiding conviction in different courtrooms, and the significance of judges’ and prosecutors’ perspectives of police work to explaining these outcomes. Still, avoiding conviction in any court occurs in a minority of cases. However, there is much judicial

⁵⁸ Court communities are influenced by the distinct styles of defense attorneys, prosecutors and judges in different courtrooms. As Skolnik’s (1967) analysis within the U.S. court context shows, some defense attorneys may have a more “cooperative” approach, while others may be more “adversarial” in how they defend their clients (Skolnick 1967). Similarly, Alschuler (1975) discusses U.S. defenders and their strategies in plea bargaining along two extreme poles. On the one side, there are “adversary” defenders who “are primarily interested in learning the weaknesses of the prosecution case and in gathering information that will be helpful in preparing a defense” (ibid: pp. 1227-1228). On the other, “cop-out lawyers” prioritize learning the strengths of the case to “rationalize a guilty plea” to themselves and their client (ibid: p. 1228).

discretion in the sentences that judges may mete out for convicted people. Cases where people are convicted of drug trafficking for the first time are especially illustrative of this. Sentences for those convicted can range widely between courtrooms, which is very consequential for people's lives. In one courtroom, judges may routinely sentence a person to 1 year and 8 months community service (i.e. an open regime punishment). By contrast, in another, they may be sentenced to five years in prison (closed regime), confined in dilapidated and overcrowded penitentiaries, where they may depend on family visits for their basic living needs, and even be forced to become soldiers of *comando* factions as means of survival. Variation in the sentencing perspectives of prosecutors and judges between courtrooms can influence significantly different strategies for the same public defender in different courtrooms.

Contestation

Just as 'guilt' or 'culpability' are meanings constructed through the "truth-making" of court processes (Foucault 2014), so too are meanings of what I conceptualize as the 'just measure of force.' A "rational-legal" application of administrative state capacity in any domain is a crucial basis on which modern state authorities claim the legitimacy to exercise power (Weber 1958). In the penal domain, written penal procedures describe a rationalized application of punishment; however, in practice neither rationalization or its orientation happen automatically. Rather, they are developed through the everyday dynamics and interactions among different court communities. Public defenders, prosecutors and judges exploit the very elasticity of written sentencing guidelines to pursue their personal, professional and practical objectives in the courtroom; it is through these interactions that court routines develop, including in ways that allow each court actor to anticipate the range of possible ways in which other members of the courtroom workgroup will interpret a specific case. Over time, members of the workgroup develop a sense of the range of possible sentencing outcomes for a specific case. Studies of court communities in other contexts have referred to this as the sentencing "going rate" or "rule of thumb" (e.g. Eisenstein and Jacob 1977). A public defender's knowledge of the going rate within their courtroom's interpretive terrain is central to how they strategize to mitigate the punishment their clients face.

One strategy that public defenders employ is to contest the validity of trial judges' interpretation of sentencing guidelines; they can do this by appealing trial judges' decisions to higher appellate courts. In contrast to the trial stage, no hearings take place when cases are re-evaluated in subsequent appellate stages. Rather, the public defender submits a *written* contestation of the trial judge's decision to be evaluated by the higher appellate court. To decide when this is a viable strategy, they anticipate the likelihood that higher courts (especially the Supreme Court of Justice) will align with the trial judge's sentence, and whether this misalignment might be to their client's favor. In courtrooms where first-time drug offenders are sentenced to five years in closed-regime prison, for example, submitting appeals all the way to the Supreme Court of Justice becomes a part of the public defender's daily work routine. Take my interview with Marco for example:

From the trial court level through the final level of court of appeals (the Supreme Court of Justice), I'm able to modify the sentence. If not in 100 percent of cases, then in 99 percent. Now, the sentence reduction doesn't always go as low as one year and eight months in open regime, but it'll be reduced for sure. Sometimes in the Supreme Court I

can get their sentence reduced to something that puts them in semi-open regime confinement.⁵⁹

Submitting these appeals still requires that public defenders “set things up at the trial level.” What comes to be classified as the just measure of force is necessarily linked to the way in which a person’s criminality is also classified. Technically, according to written law the minimum prison sentence for drug trafficking is five years (max 15 years); however, written law also specifies qualifications for a sentencing “privilege.” To qualify for this privilege, a person must be (1) a first-time offender; (2) have no ongoing criminal case and (3) have no “affiliation with organized crime” (Brazil 1941; Semer 2019). Public defenders therefore need to do the work of “distancing” the possibility of their client being interpreted as an affiliate of organized crime. For example:

If I start to feel that the responses have gaps, I start to ask questions about if my client was trafficking in other moments, so I can start to distance the idea that this activity is directly connected to organized crime. “I ask if there was some sort of notebook indicating trafficking movement, or if he [the police officer] was able to find any sort of concrete evidence that my client belonged to a criminal organization. But deciding to ask these questions is really part of the moment because sometimes this could backfire for my client.”⁶⁰

Public defenders’ success in appealing sentences has also generated more systematic change in some courtrooms. During one of my days conducting observations in the courthouse I shadowed Rafael, a public defender who was taking on the infamously dreaded “double docket”—where he had to manage concurrent trial hearings for both his clients and those of his colleague (who was taking vacation time). I spent the afternoon tailing his heels as he popped in and out between both courtrooms. At one point, there were defendants in both courtrooms facing prosecution for drug trafficking, and both for the first time. Without hesitation, Rafael jetted into his colleague’s courtroom to represent her client instead. During my interview with him at the end of that same day, Rafael explained that the judges in each courtroom had very different sentencing practices:

I’m appealing very infrequently in my own courtroom these days because I was able to transform the position-taking of my judge. I was able to show him that in a situation where he would give five years in prison he should give a sentence of one year and eight months. That’s the first point. And then I was also able to show him that instead of one year and eight months in closed regime it should be in open regime in certain cases. “So these days I’m really not submitting appeals anymore in first-time drug trafficking cases, except for when I’m taking on cases from my colleague in the courtroom next door.”⁶¹

⁵⁹ Interview, Public Defender 43, São Paulo, November 2019.

⁶⁰ Interview, Public Defender 42, São Paulo, November 2019.

⁶¹ Public defender quotation cited from Fieldnotes, São Paulo, November 2019.

Negotiation

In other cases, mitigating the punitiveness of client's sentences may instead involve negotiation with other court authorities.⁶² Most commonly, such communication and negotiation would involve a client admitting their guilt to having committed the crime. Such admission of a confession would make the person ineligible to later contest (or appeal) their conviction or sentence to a higher appellate court. In exchange, however, an agreement would be made to reduce the punitiveness of their sentence (in relation to what it would have been had they not confessed). Communication between public defenders and the judge and/or prosecutor regarding this possibility typically takes place during the trial hearing itself, after all witnesses have provided testimony and *before* the defendant's interrogation. Take for example one day of my shadowing Catarina [public defender]:

Raúl, her client, sits at the table perpendicular to the judge's desk at the other end of the room, quietly listening to the police officers' testimonies. After the second officer is excused from the room following his account of things, Catarina stands up and nods to the military police soldier to escort Raúl into the hallway. Catarina walks closely behind them, but right before exiting into the hallway, she turns toward the judge and they lock eyes in what seems to be a routine mode of communication. The judge says: "I'll give three years and five months in semi-open regime," and Catarina nods back. Then, I follow Catarina out into the hallway. Like in most cases, this is Catarina's first time speaking with Raúl. With less than five minutes to talk, she introduces herself to him and starts sharing her take on his case: "Both police officers gave the same story of things and knowing the judge—I've been working with her for several years now—she's going to convict you. Usually, there isn't any benefit to confessing for people accused of drug trafficking for the first time, but in your case the judge has agreed to reduce your sentence to semi-open regime if you confess. Otherwise, your sentence will be in closed regime prison. Now, if you didn't do it and don't want to confess, we can always appeal the decision. But reducing your sentence won't likely happen in the STATE level court of appeals. They're tough. If your sentence were eventually reduced, it'd only be when it

⁶² Existing research on "law-in-action" and court communities has elaborated on the dynamics of negotiation that are central to court processes and outcomes (e.g. Eisenstein and Jacob 1977; Nardulli 1986). The scant scholarship that focuses on legal aid work dynamics of negotiation (Wice 2005) elaborates the unfolding of negotiations in plea bargain deals in the United States context. The plea bargain involves an admission of their client's guilt with the prosecutor in exchange for avoiding taking the case to trial and the perceived risks of doing so. Analyses have most thoroughly unpacked dynamics of negotiation between defense attorneys and prosecutors. I use the term "negotiation" to refer to a broader class of practices of exchange and compromise. Different from plea bargains, in the present analysis, the negotiations I describe take place *during* the trial itself, rather than before the trial. The dynamics of negotiation are even more variable in this context given that public defenders may negotiate an admission of guilt with the prosecutor *and/or* the judge. As I elaborate in this section, this is tied not just to different perspectives on "reasonable" sentences, but also differences in the authority prosecutors and judges assume in relation to one another in each courtroom.

gets to the Supreme Court, and by the time your case gets to *that* court, you'll already have served most of your time in closed regime confinement anyway."⁶³

In order to determine the most viable strategy, public defenders take into consideration the likely perspective of the judge and prosecutor, as well as the relationship between their positions they will likely take on each case. In some courtrooms, for example, judges' sentencing tendencies may routinely *surpass* the perspective of the prosecutor in terms of what they consider to be a "reasonable" sentence. Brazil's return to electoral democracy in the late 20th century ushered in several reforms to formal penal procedures that redefine the dynamics of power among court actors (CEJA 2015); several reforms have been backed by interests to put into greater check the wide discretionary powers and authority of judges by increasing the relative authority of prosecutors. However, nearly two centuries of virtually unchecked authority of judges has influenced the uneven implementation of these reforms in practice. Within these circumstances, public defenders may try to strike a deal with the judge to mitigate the punishment of their client.

Depending on the position of the prosecutor, however, they might alternatively opt not to strike a deal with the judge and instead appeal the sentence to a higher court. Some prosecutors express frustration that judges "surpass their limits;" while others are frustrated that the "excessive punitiveness" of the judge is giving them "unnecessary work" because "now I have to respond to all of the public defenders' appeals, which we both know they'll win." In such cases, prosecutors may agree to support the public defender's appeal by aligning their position-taking with the public defender in their required written response to such contestation.

In other courtrooms judges mete out what public defenders describe as "reasonable" or even "lenient" sentences. In such courtrooms, they must consider the risks of a potentially more punitive prosecutor being assigned to their courtroom on that particular day. Public defenders can appeal sentences they perceive to be "too punitive," but prosecutors can appeal sentences they consider to be "too lenient." Public defenders weigh the risks in each case of prosecutors submitting such appeals. If they think an appeal would yield a harsher outcome for their client, this may lead them to negotiate their client's confession with the prosecutor to avoid that appeal. Take for example my interview with Bruno:

The judge, he gives the minimum privileged sentence of one year and eight months in open regime even in situations that involve a large quantity of drugs. If I were a judge, I wouldn't even give a sentence that low. If I can't convince *myself* of the sentence then I know the prosecutor's appeal to a higher court is also likely to worsen things for my client if we don't strike a deal.⁶⁴

Amid these dynamics, public defenders, prosecutors and judges develop routines within their courtroom's distinct interpretive terrain —the entrenchment of these routines over time is especially apparent in moments when another public defender seeks to deviate from them:

As I walked down the courthouse halls, I ran into Carla, a public defender whom I had previously interviewed, who was standing in front of her office door with her face

⁶³ Fieldnotes, São Paulo, September 2019.

⁶⁴ Interview, Public Defender 41, São Paulo, November 2019.

cringed. I asked her what was wrong. Carla had been taking on the courtroom hearings of her colleague. In contrast to Carla's courtroom, most of her colleague's cases were resolved by striking deals with both the prosecutor and judge. But that day, Carla refused to strike a deal in a situation where she learned her colleague would have:

"I didn't see any advantage for my client to confess, so I counseled my client to appeal the judge's sentence to the higher appellate court instead. I sometimes think my colleague has lost a sense of how things might turn out in higher courts and is too quick to strike deals now. They appeal too infrequently to have a sense of how it would have turned out after appeal."

She went on to say that the judge had castigated her for "breaking trust" among their workgroup, emphasizing that the prosecutor would have "come down harder" if they had known there would be a defense appeal. As a researcher, I wasn't in a position to decipher the potential legal outcomes of Carla's appeal to a higher court; however, her concerns suggest that different routines come to provide different bases of knowledge about the potential advantages and risks of certain strategies. In particular: evaluation of the potential (mis)alignment between sentencing at the trial level and higher appellate courts. And yet, now that the court routine in Carla's colleague's courtroom was set in motion, breaking from that routine, or at least attempting to, could yield new consequences for the courtroom dynamic—and potentially more jeopardizing ones for future clients.

Conclusion

In this chapter I analyzed three strategies public defenders employ to intervene in their courtroom's interpretive terrain and mitigate the punishment their clients face: instigating doubt, contestation, and negotiation. Public defenders face many shared challenges in their work, including resource and time constraints and many poor individuals' distrust and fear (of state authorities or *commandos*) to provide witness testimony in court that could strengthen the possibility of mitigating—or avoiding—punishment. However, I find that public defenders are still able to actively intervene in court processes and outcomes from their position. By analyzing why the same public defender may employ distinct strategies within different courtrooms, I bring to fore important variation in the horizontal and vertical constraints of each courtroom's interpretive terrain.

Law-in-action research has identified various conditions that shape the ground-level workings of penal court processes—from the size and demographics of jurisdictions, to legal cultures, technology, time, the subjective perspectives of different court actors, and interactional dynamics among the "courtroom workgroup" (Eisenstein, Nardulli and Flemming 1988; González Van Cleve 2016; Travers and Manzo 1997; Paik and Harris 2015). I advance this inquiry by identifying two key dynamics that influence variation in public defenders' strategies: (1) prosecutors' and judges' relative (dis)trust in the validity of police work and (2) public defenders' perceptions of the likely (mis)alignment between trial judges' interpretations and those of higher courts.

First, studies have placed great emphasis on the significance of policing authorities to the selectivity of penal state power, and more recent scholarship highlights the significance of prosecutors' and judges' trust in police work to explaining high conviction rates in court. My

analysis of public defenders' strategies brings attention to variation in the level of validity and scrutiny that prosecutors or judges may apply to police work and statements; and I demonstrate the importance of such differences to explaining legal aid workers' ability to mitigate the punishment their clients face.

Second, studies emphasize the importance of political dynamics and their relationship to court institutions as significant vertical constraints on penal processes. By contrast, much less focus has been placed on the vertical relationship between penal courts at different levels of the judicial hierarchy. My analysis describes how the relative alignment or not between local courts and appellate courts shapes public defenders' ability to mitigate the punishment of their clients or not in certain courtrooms. Given the significant variation in this relationship between the position of prosecutors and judges at the local level and the interpretations of higher courts, public defenders' strategies contribute to significantly different routines in different courtrooms. These routines in turn influence their very perspective on the likely outcome of employing certain strategies. On the one hand, this accumulated knowledge allows them to avoid taking actions that could further jeopardize their client; on the other, they also influence—and may potentially limit—their knowledge of what could or could not have been otherwise.

IV. PROBING LEGAL AID:

ADVANCING STUDIES OF PUNISHMENT, STATE POWER AND WORK

Introduction

In contrast to more familiar accounts of legal aid workers as mechanisms of “access to justice,” I draw on the sociology of work, penalty and state power to conceptualize legal aid workers as occupation, profession, and fabricators of legal power. I do so to answer three core questions: (1) *What motivates people to provide legal aid to poor people in penal courts?* (2) *How do legal aid workers understand their professional role?* (3) *How do they influence penal court processes?* To address these questions, I examine public defenders who work in the penal courts of Brazil’s Salvador and São Paulo city. In this concluding chapter I first summarize my key findings and how they open lines for future inquiry on legal aid. Then, I elaborate my analysis’ broader contributions to inquiry in the sociologies of penalty, state power and work.

Occupying legal aid positions in penal court

In the first empirical chapter of this manuscript (Chapter 2 – *Becoming a Public Defender*), I analyzed the profiles and trajectories of public defenders in Salvador and São Paulo. I showed how the requirements of entry into public defender positions, the level of competition over them, and daily work routines are all important to explain who ultimately occupies such positions. This analysis advances research on the relationship between legal aid professionals and penalty in Brazil. Akotirene (2024) spotlights penal courts as vivid “scenes of colonial power” in Brazil’s contemporary democracy, where mostly white court authorities carry out a seemingly pre-determined ritual and make decisions about poor Black people’s lives while neglecting their experiences of police violence and torture (Akotirene 2024). Lages and Ribeiro (2019) raise concerns about public defenders’ contributions to these inequalities and violence, especially given that they themselves come from highly elite and privileged positions in Brazilian society with lived experiences far different from the clients they defend. My analysis clarifies the conditions that have rendered the public defender a position overwhelmingly reserved for the country’s privileged white elite.

This study also brings attention to subnational variation in the motivations that drive people to provide legal aid in penal court long term in Brazil; in particular, I highlight the significance of the nature of their daily work routines to mediating the profiles of those who choose to stay. The organizational structure of public defender offices and the public defender career are relatively similar across Brazil (Alves 2006); however, my analysis demonstrates that local public defender work routines still vary drastically based on the size, geographic distribution and demands of local penal states. In comparison to Salvador, São Paulo’s significantly greater penal state capacity has corresponded to higher caseloads and a broader geographic distribution of police stations and penitentiaries, which has made public defenders’

routine interaction with their clients administratively untenable, in comparison to public defender work routines in Salvador. My findings extend inquiry to the significance of differences in local penal state capacity and geographies to the organization and motivations of public defender work in Brazil.

My findings also further advance analyses of legal aid professionals in Latin America at the regional level. Developing and expanding offices to provide legal aid services to poor people has been a central component of the broader constellation of reform initiatives sweeping across the region since the late 20th century (Ribeiro and Fondevila 2023). I demonstrate the importance of analyzing differences in the (1) requirements of entry into legal aid positions, (2) the level of competition over these positions, and (3) daily work routines, to explaining the profiles and motivations of those who provide legal aid to the poor in different Latin American countries amid these reforms.

Arriagada's (2023) recent analysis of legal aid professionals who work in the Chilean Unit of Penitentiary Defense elaborates multiple "narrative tropes" that have enabled these defenders to find meaning and motivation in their work—from some defenders' narratives of their privilege and "moral responsibility" to challenge injustice, narratives of a personal "calling," or narratives in which defenders associate their own past experiences of lived precarity and incarcerated family members with the lived experiences of their clients (p. 515). Arriagada (2023) highlights recent education initiatives in Chile that increased access to law school since democratization as crucial to explaining the significant number of defenders who actually directly identify with clients' experiences of precarity. In comparison to Chilean defenders, narratives of self-identification with clients were absent among the public defenders I studied in Salvador and São Paulo, despite similar policies that have increased people's access to law school since democratization. The prevalence of these narratives in the Chilean case, but not in the Brazilian context studied here demonstrates the importance of analyzing not only why people may want to work in legal aid positions (which has been the primary focus in research thus far), but the conditions of entry and competition that shape who is admitted to such offices within different Latin American legal fields (or not).

This analysis also advances understanding of legal aid more broadly. Existing studies of legal aid workers' motivations have contributed to identifying a wide range of practical and political motivations that can drive law graduates to work as legal aid professionals in penal courts. Most of these studies (with Arriagada's 2023 focus on Chile being among the exceptions) have elaborated motivations that drive public defenders to such work in the United States, where positions are often characterized by lower salaries relative to job alternatives and a pervasive cultural "stigma of ineptitude" (McIntyre 1987; Weiss 2005). The focus on such cases has eclipsed the significance of the requirements of entry into legal aid positions and also the level of competition (or not) over such work.

A notable exception is Wice (2005)'s analysis of the Washington, D.C. Defender Service which he describes as "unique" relative to other U.S. legal aid offices: significant financial support and resources from the federal government, relative administrative independence, and a strong culture of mentorship for young attorneys has yielded greater success in recruitment and retention of law graduates, including representatives from "many of the finest law schools" (Wice 2005, p. 167). Wice (2005) further emphasizes that "Because of the excellent reputation" of the office, the Washington agency is able to "choose new attorneys from hundreds of applicants" (p. 166). In my study, I demonstrate the importance of examining the basis on which legal aid offices make their selection among candidates. What are the bases on which legal aid

offices admit law graduates who apply to such positions? What are the resources or characteristics that favor certain candidates over others? In what ways do these processes favor candidates with certain motivations or worldviews? Of course, not all legal aid offices encounter a surplus of candidates; my findings also invite further analysis of the significance of these dynamics to circumstances in which there may be a shortage of applicants. How might the requirements of entry influence this very shortage in certain contexts? Which law graduate profiles and motivations are disadvantaged by processes of gaining entry, and what are their implications for the services provided to clients? In what ways do these conditions undermine legal aid services? In what ways do these conditions safeguard the service itself?

Lastly, I extend analyses of legal aid recruitment and retention to variation in ground level work routines. Existing studies focus on how recruitment and retention of law graduates to such positions can be influenced by the administrative autonomy relative to other institutions, salary, workloads, and the cultural assumptions about legal aid workers among clients, legal professionals and society more broadly (McIntyre 1987; Wice 2005). Studies so far have focused on high caseloads and resource constraints in public defender work as an obstacle to retaining people long term. Here, I examine legal aid in a context where public defenders work within an organizational context of relative administrative autonomy from other state institutions, they earn significantly high salaries, and possess relative occupational prestige. The dramatic social distance between public defenders and their clients within this context places into clearer view how physical distance or proximity to clients in everyday work routines mitigates who among these attorneys will stay long term. These findings invite future research on how work routines influence public defenders' motivations to remain in legal aid positions, and why.

The mandate of legal aid professionals

In Chapter 3 (*The Role of the Public Defender*) I examined what public defenders perceive to be their professional mandate. Research emphasizes zealousness as an important characteristic of the “good” legal aid worker, but the orientation of this motivational drive depends on what these professionals understand to be their mandate, which is influenced by what they perceive to be possible and distinctive from their position within the broader division of court labor. I highlight three roles Brazil's public defenders believe they have the potential to play in different penal court contexts for their clients: harm reduction, bearing information, and humanization. Public defenders' perceptions of their professional mandate and the roles they may choose to play in practice are of course distinct; but their points of view offer important insight into the potential roles legal aid workers may play under certain work constraints.

In both Salvador and São Paulo and for public defenders working across all three stages of the penal process, they emphasized their “technical legal expertise” and abstract knowledge of the written law as an essential characteristic of their role and influence as *harm reducers*. Under conditions in which any penal court process is punitive (for those who are convicted or not), their knowledge of the rules of the legal game is a central basis on which they emphasize they can reduce the harm their clients are inevitably bound to face. My findings support findings in the previous studies conducted by Wice (2005) and Weiss (2005) in U.S. public defender contexts. Despite otherwise significantly different dynamics and contexts within which legal aid operates in these studies, we can understand this similarity as based in legal aid workers sharing of a resource that is a defining requirement of the position itself—the recognition of technical legal expertise that makes them contenders to intervene in legal processes and outcomes. However, I

also identify *information bearing* and *humanization* as two additional roles that legal aid workers may perceive as distinctive services they can provide for their clients.

Legal aid workers possess not only legal expertise but also license to access people and places that position them as unique *bearers of information* for their clients and family members. The basis on which legal aid is justified as a fundamental right in many court contexts is precisely because of the violence that occurs when people are denied access to specialized legal expertise to protect themselves and their interests in court. Access to such knowledge is an important resource for clients to develop their own strategies to pursue their interests and advocate for themselves, or to allow them to make more informed decisions about which actions to take in court (or not) amid otherwise highly constraining circumstances.

And yet, the information legal aid workers can provide their clients to pursue these aims is not merely technical. Far from simply knowledge about the written law, legal aid workers also have an accumulated knowledge and expertise based on their routine work practices about everyday dynamics that shape how the law operates *in action* in their particular court, which can be decisive for clients' own actions and decisions. In many instances legal aid workers have unique access to information that they can provide to their clients; in other instances, the information they have access to is not necessarily unique, but they have access to it more quickly than other actors who could provide it to their clients; this can prove decisive for clients in critical moments of the penal process—be it by giving them or family members time to take actions that can benefit them within the temporal constraints of a penal bureaucracy, or to appease the debilitating anxieties people experience by knowing very little about what their future will bring in the face of the penal state.

Legal aid workers also occupy a professional position that makes them contenders to *humanize* clients in the eyes of penal state authorities who make decisions about their lives. There is indeed a significant social distance between public defenders and their clients in Brazil, but their interactions with clients and their circumstances by the nature of the profession (even if to varying degrees) becomes a distinct source of knowledge in relation to that possessed by most prosecutors and judges. At the same time, their position grants them access to interactions with prosecutors and judges in their daily work routines in ways that present opportunities for them to humanize clients and their experiences in the eyes of these other court actors—for example, by interpolating prosecutor and judges' assumptions about the legitimacy of certain punitive practices that are routinely executed toward marginalized people as the outcome of their court decisions.

The license and authority that public defenders possess in Brazil is far from representative of most other cases in the world; rather, their training in top law schools together with the broad license they are granted in everyday penal court contexts at all three stages of the penal process is a useful case to identify the range of different sources of power (or not) that legal aid workers can have at their disposal and provide to their clients. And yet, I found important differences in the roles public defenders perceived as decisive to their work in each city, even between those who work in the same segment of Brazilian penal procedure. In contrast to harm reduction on the basis of their technical expertise, public defenders in Salvador and São Paulo vary much more significantly in terms of their emphases on information bearing and humanization. Far from reducible to differences in public defender profiles or levels of motivation, I demonstrate how differences in the very practices and environments that compose their position in the division of court work shape the type of service they believe they can provide for their clients.

These findings invite further inquiry into the conditions that influence legal aid workers' perceptions of their professional mandate. By identifying the potential of legal aid workers to be harm reducers, information bearers and humanizers, I offer a useful comparative reference for inquiry in other contexts on the dynamics that influence when and why legal aid workers perceive themselves to play each of these distinct roles for clients and their families. To what extent are their emphases or not in different contexts based on political perspectives and ideology; and, to what extent are they instead explained by the practical division of court labor of which they are a part? Moreover, in the context analyzed here, the public defender is a profession of relatively high prestige. To what extent might perceptions of information bearing and humanization also be influenced by relative differences in prestige of the position and the access that this symbolic authority may grant such professionals in particular courts? Importantly, these professional roles are not exhaustive of legal aid workers' potential functions. Future inquiry in other contexts would further contribute to this research agenda by investigating what other roles legal aid workers may potentially believe characterize their mandate in different penal court contexts.

Legal aid workers' strategies to influence penal court processes

In Chapter 4 (*Public Defenders in Action*) I examined the strategies public defenders in São Paulo employ to intervene in their courtrooms' interpretive terrains. In particular, I dissected three strategies to mitigate the punishment faced by clients being prosecuted for drug trafficking amid the arbitrary forces that constrain courtroom processes: instigating doubt, contestation, and negotiation. It is through these strategies that they contribute to fabricating legal power, at once mitigating and legitimizing how and toward whom penal state power is exercised through their influence on how people and practices are classified in written law. Public defenders who work in different courtrooms have many shared challenges—from resource and time constraints, to many poor individuals' distrust and fear (of state authorities or *commandos*) to provide witness testimony in court that could strengthen a client's defense. Yet the same public defender may employ distinct strategies within different courtrooms due to there also being important differences in the horizontal and vertical constraints of each courtroom's interpretive terrain.

First, my findings advance research on the law-in-action in Brazil. Godoi's (2019) analysis of São Paulo's public defenders in post-indictment courts conceptualizes public defender work as a bona fide "art to free people" from the grasp of the penal state. In the present study, I demonstrate that public defenders not only have the potential to "free people," but more broadly clarify how they can mitigate penal coercion in various ways through strategies to influence legal classification. I identify three strategies that constitute this "art" of public defender work to mitigate the punishment clients face in Brazil's local penal courts and demonstrate how these strategies are influenced by the arbitrary forces within which each public defender works at ground level.

Second, I advance research on legal aid practices in Latin America. Previous studies on penal courts and processes in Latin American countries highlight many dynamics that characterize court processes in the region, especially growing penal court capacities, high rates of *em flagrante delicto* arrests and weak police investigatory capacities. Moreover, recent initiatives to remedy inefficiencies in court processes have ushered in a "managerial rationale" (Ciocchini 2017). This has "contributed to standardizing and expediting case-processing in ways that have undermined reformists' other goals to increase legal protections for people facing state

prosecution;” studies show how rather than improving accountability of police work, the emphasis on efficiency has instead contributed to “speedier convictions and longer sentences” (Bergman and Fondevila 2021; Ciocchini 2014; Santos 2024, p. 8). Godoi (2019) argues that legal aid work is important to protect poor people, while also coming to feel “futile” to defenders under these constraints. Building on this research, I document how legal aid workers do influence court processes in a Latin American court context; I also elaborate how they navigate local variation in the constraints of their individual courtrooms. While legal aid workers face challenges due to a general punitive legal culture in most Latin American contexts, I find that differences in public defenders’ strategies even within the same courthouse are shaped by important variation in terms of: (1) prosecutors’ and judges’ relative (dis)trust of the validity of police work, and (2) public defenders’ perceptions of the likely (mis)alignment between trial and appellate courts’ interpretations of written law.

Third, I advance research on legal aid practices more broadly. The few empirical studies of legal aid workers’ practices have largely focused on U.S. court contexts. Despite most cases in the U.S. never reaching trial, this research demonstrates how legal aid workers are not passive bureaucratic actors and can indeed influence case outcomes for their clients (Wice 2005), especially through their ability to negotiate a “good” plea bargain deal relative to the “going rate” of punishment (Eisenstein, Nardulli and Flemming 1988). In the present study, I examine a context in which most cases that public defenders take on *do* go to trial. I demonstrate the utility of inquiry into legal aid strategies for identifying the constraints that shape different courtrooms’ interpretive terrains and the factors that influence legal aid workers’ ability to influence court routines and outcomes. In contrast to more traditional paradigms that analyze legal aid work in relation to ideals of “effective legal counsel,” the present study’s analytic shift to focusing on legal aid strategies to influence legal classification offers a fruitful method to generate hypotheses and provides bases for comparative research. When do legal aid workers seek to instigate doubt, contest, or negotiate, and why (or why not)? How do these strategies influence courtroom work routines in different contexts, and with what implications for their clients?

Advancing research on punishment, state power, and work

This analysis also more broadly advances social scientific inquiry on penalty, state power and work.

Punishment and inequality

A vast body of scholarship has contributed to our understanding of the profound influence penal state policies, practices, and actors have on the organization of social inequality and conflict along economic, gendered, and ethno-racial lines, among other social divisions (Alexander 2010; Gibson 2011; Simon 2016; Sozzo 2018; Van Cleve 2016; Wacquant 2009). I extend this research to the study of legal aid workers. My analysis of the profiles, perspectives and practices of public defenders in Brazil provides an unprecedented view of a key occupation of public defenders and the ground level workings of local penal courts as they manage and process an unprecedented number of poor, *preto* and *pardo* people in Brazil’s contemporary democracy. The daily work practices of penal courts in Latin America have long been a “black box” (Santos 2024). More recent empirical studies of penal court processes amid ongoing reforms in the regions demonstrate that the implementation of certain reforms in practice have

“occluded the substantive rights such policies initially purported to advance” (Akotirene 2024; Bergman and Fondevila 2021; Ciocchini 2017; Santos 2024, p. 7). My examination of public defenders in two Brazilian cities nonetheless demonstrates that there can be significant differences in how formal procedural reforms are being converted into practice at ground level, even within the same country. In so doing, I invite further inquiry into the profiles of local Latin American penal court authorities, the roles they play, and their everyday court work routines to further clarify the dynamics shaping penal state transformation across Latin America, and their implications for inequality, violence and racialized social conflict.

More generally, by extending the sociology of punishment to legal aid, I demonstrate the importance of probing legal aid workers’ motivations, roles and work practices to understanding penal state administration. First, I clarify key dynamics that influence who occupies legal aid positions; and I bring attention to the significance of work environments and routines as important mediating conditions. Clair’s (2020) analysis of defense attorneys in Boston demonstrates how differences in social privilege between clients and their defense attorneys (both paid attorneys and legal aid workers) can correspond to differences in perspectives on what is within a client’s “best interest” as well as a defense attorney’s level of motivation to carry out their mandate. Clair shows how this difference in privilege between defense attorneys and clients can exacerbate inequalities along economic and racialized lines in case outcomes. By focusing in the present analysis on legal aid workers in particular and comparing their motivations to pursue this work in two different cities, I show how the practical organization of legal aid work itself can be an important mediator of these risks, especially the nature of daily interaction between legal aid workers and their clients.

I also advance research on the conditions that influence “law-in-action.” Law-in-action research has identified various arbitrary factors that shape the ground-level workings of penal court processes—from the size and demographics of jurisdictions, to legal cultures, technology, time, the subjective perspectives of different court actors, and interactional dynamics among the “courtroom workgroup” (Eisenstein, Nardulli and Flemming 1988; González Van Cleve 2016; Travers and Manzo 1997; Paik and Harris 2015). I advance this agenda by identifying two important dimensions that contribute to local court processes: (1) court authorities’ relative (dis)trust of the validity of police work, and (2) the relative (mis)alignment between trial and appellate judges’ interpretations of written law.

The everyday work of state policing authorities plays a central role in defining the selectivity of penal state power; yet, as Eisenstein, Nardulli and Flemming (1988) emphasize, it is court actors who evaluate and consecrate policing work as legitimate or not. However, the focus of law in action studies on U.S. court contexts, where defendants most frequently admit a guilty plea before ever reaching trial, has eclipsed the significance of court actors’ assumptions about the validity of police work to case outcomes. Jesus’s (2019) discursive analysis of penal case decisions in São Paulo brings attention to how court authorities’ assumptions about the validity and reliability of police work sustains processes of criminalization. In my analysis of public defenders’ strategies across different courtrooms in this same city studied by Jesus (2019), I find variation in prosecutors’ and judge’s assumptions about police work between different courtrooms, with practical implications for case outcomes. This finding invites future research into variation in court actors’ perspectives on police work as important to understanding penal court processes and outcomes—be it the perspectives of prosecutors and judges, or the perspectives of jurors (in instances of jury trials). Probing such perspectives is important to

explain not just differences for cases that *do* make it to trial, but even for explaining why they are more likely to be resolved before even getting to that stage in certain contexts.

By analyzing penal court processes within a context in which many cases go to trial, I also demonstrate how court actors' perceptions of the likely alignment of trial decisions with higher courts, or not, influences their courtroom strategies. This finding not only opens inquiry into how such (mis) alignment shapes court actors' strategies in other contexts where cases do go to trial; it also brings attention to court actors' perceptions of this vertical relationship as important to explain contexts in which cases frequently do not make it to the trial stage.

Lastly, I demonstrate the utility of inquiry into legal aid workers' strategies to identify the horizontal and vertical constraints that shape differences in local penal court processes and outcomes. This offers a fruitful method for generating hypotheses and providing bases for comparative research on the conditions that influence the criminalization of socially marginalized people.

State power and domination

By analyzing the requirements of entry and competition of public defender positions in Brazil I highlight the unintended consequences of initiatives justified by reformers as efforts to address inequality in the country's contemporary democracy. The many pragmatic advantages that public defender positions offer in the country have been crucial to the swift expansion of state capacities to routinely provide legal aid to the poor at greater scale since democratization. At the same time, changes in Brazil's education system over this period increased access to law school for people historically excluded from higher education, contributing to a boom in law graduates countrywide. Amid this hypercompetitive market for law graduates, I demonstrate how the resources needed to score high enough on the public service exam to become a public defender has ultimately excluded most candidates from less advantaged social positions from becoming defenders of the poor in Brazil.

My analysis further extends inquiry to how inequality and racialized violence are influenced by *legitimized* state practices in Latin American democracies. A vast literature on state power in Latin America has spotlighted examples of violence against the poor and ethno-racially marginalized people in ways that are denounced by human rights groups and scholars as "extra-legal" or as examples of the "unrule" or "misrule" of law (Conectas 2011; Pinheiro 1999; Ungar 2002). The underlying assumption in this scholarship is still a regulative ideal where state power is neither socially selective nor arbitrary when properly applied. However, substantive reforms underway in Latin America that have garnered recognition as increasingly more legitimate ways of exercising state power (in the eyes of influential segments of the populace)—while at the same time impacting the poor and ethno-racially marginalized people at unprecedented scale.

In contrast to paradigms of "rule of law," recent scholarship elaborates Latin American state rulers' practices to "rule *through* law," a concept developed by Hathazy and Müller (2016)—by more closely aligning penal administration with practices defined in written law, political leaders have been able to harness "rule of law" discourses in ways that convert the seemingly neutral character of legal power to naturalize penal state coercion along unequal lines (Hathazy and Müller 2016; Santos 2022)—and, with much greater capacity than the dictatorships before them (Santos 2024, p. 8). I spotlight legal aid as a crucial mechanism of rule through law in Latin America. Indeed, developing and expanding legal aid services has been a central priority

amid the broader constellation of penal reform initiatives currently sweeping across the region (Fondevila and Ribeiro 2023). My analysis demonstrates the importance of investigating the profiles, motivations and practices of legal aid workers to clarifying the forces that influence how states exercise and more effectively *naturalize* violence toward socially marginalized peoples in Latin American democracies.

More broadly, by conceptualizing court actors as fabricators of legal power I extend analyses of state power to the profiles, trajectories, roles and practices of ground level court actors. In contrast to political theories that legitimize state power on the basis of law's neutrality and autonomy from outside forces, Eisenstein, Flemming and Nardulli (1999) emphasize the perils of what they term to be the "legal metaphor"—that is, that the "Law" is "a set of rules transcending time, geography, and the circumstances surrounding specific cases" and embodies something "uniform, general, continuous, equal, certain and pure" (p. 5). In contrast to this traditional legal metaphor, Eisenstein, Flemming and Nardulli (1999) highlight how court processes presumed to "enforce" the "Law" are actually always shaped by various arbitrary forces. Their conceptualization of courts as "communities" rather than "law enforcers" has served as a crucial reference for empirical court studies. However, the relationship of local penal courts to state power has remained undertheorized. By drawing on Bourdieu's (1987) theory of the law as a crucial resource of symbolic state power, I *bring the law back in* to conceptualization of the courts and court actors, while avoiding the analytic perils of the "legal metaphor." I instead offer a framework that accounts for the arbitrary forces that produce legal power and spotlight court actors as crucial objects of analysis for inquiry on how and toward whom states routinely exercise their power legitimately (or not).

Beyond the courts, my findings also advance the sociologies of state domination and the "politics of waiting." Auyero (2012) analyzes the "extended waiting" of poor people seeking welfare and administrative services in Argentina to demonstrate how making poor people wait is a "strategy of state control." Rather than feeling like citizens, they instead learn to be "patients of the state" who must wait for long and indefinite amounts of time to receive services or even information, as they are managed and processed by confusing state bureaucracies. My analysis of public defenders' perceptions of their mandate to be information bearers extends inquiry to the professionals who may be uniquely positioned to counteract the systematic exclusion of poor people from information that so frequently renders them to be what Auyero (2012) terms "patients of the state."

By examining public defenders' perceptions of their role as humanizers, I also extend inquiry to processes of humanization that counteract naturalized state violence. Luft's (2023) analysis of the Rwandan genocide demonstrates that "dehumanization is a consequence, not a cause of violence." That is, mass scale violence is *initially* motivated by intense emotional and cognitive reaction toward peoples; it is over time, through the routinized execution of such violence that "cognitive, emotional, and relational transformations" take place that make violence "easier over time" because perpetrators no longer see those very people as human; it is through such transformation that violence becomes understood as morally inconsequential in the eyes of those who execute or sanction it (p. 341). In my analysis, I focus on professionals who understand their role as one of counteracting processes of dehumanization. In contrast to more common accounts that focus on "humanization" as a normative ideal, then, I highlight humanization as a sociological process, and open inquiry into the authority and practices of professionals who see themselves as positioned to do so, or not.

My analysis of legal aid professionals also contributes to the sociology of work. First, building on Bourdieu's distinction between social space and physical space (Bourdieu 1991; Wacquant 2023), I advance scholarship that examines the relationship between these two dimensions in shaping the labor of poverty management. Showalter's analysis of opioid use and related services in California's non-urban regions demonstrates how routine physical proximity between clients and practitioners in their daily lives produces a sort of "acquainted marginality" within "small, undifferentiated settlements with densely acquainted populations." That is, in non-urban spaces, clients and practitioners "frequently grow up with one another, and develop multilayered relationships" that can undermine marginalized people's "privacy, augment surveillance," and "escalate harm" (Showalter 2020. p. 5). Showalter contrasts this dynamic to urban regions, where street-level bureaucrats and the clients they serve "are not personally acquainted and can expected not to see one another outside of the service setting" given that their social distance typically corresponds to a physical distance in their everyday lives. In the present case, I demonstrate that it is precisely this correlation between social distance and physical distance in urban regions that the degree of physical proximity between service providers and clients in the work-world can influence who comes to occupy such service positions, their motivations and the service itself.

The privileged white elite who become public defenders in Brazil have little understanding or even imaginary of the poverty, violence and racism that their clients experience in their everyday lives (Caldeira 2002; Smith 2016). This extreme case of social distance between service providers and clients in urban contexts brings to fore the significance of direct interaction between these actors to influencing the profiles of those who come to work on the front lines of poverty management and service provision.

Second, this study brings attention to the work of *interpretation* involved in the labor of street level bureaucrats. Seim's (2016) elaboration of a "labor theory of poverty governance" accounts for the practical labor of street level bureaucrats, and also the horizontal and vertical constraints within which they work in processes of poverty management. Seim offers a dynamic example of the utility of this framework by clarifying the practical labor of ambulance workers as one of transforming "spaces in bodies and bodies in spaces" and "burden shuffling" shaped by both horizontal and vertical constraints. By extending this analytic approach to penal court actors I bring attention to the *labor of interpretation* that shapes and is shaped by the practical and relational dynamics of work.

The work of public defenders to influence penal court processes involves perceiving and influencing the possibilities for legal classification within the constraints of their work's interpretive terrain. Far from a formalistic exercise, this involves not only perceiving the range of viable interpretations of written law but also anticipating the likely interpretations and application of legal power by prosecutors and judges. Given the context and nature of court work, the elasticity of the rules that guide their work is especially apparent; however, this type of interpretive labor in relation to elastic categories and rules is also pertinent to other street level bureaucrats—be it a professional with license and expertise to diagnose people's physical pain or 'state of mind,' classify people's financial 'responsibility' or identify 'suspicious' behaviors.

Bringing attention to the labor of interpretation offers a sensitizing approach to explaining not only street-level bureaucrats' practices, but also their restraint or absence of action. For example, by analyzing public defenders' strategies to mitigate punishment in drug

trafficking cases, I show that certain strategies involve taking concrete actions; in others, however, public defenders intentionally chose *not* to act (e.g. not asking questions during an interrogation) to avoid instigating potentially compromising interpretations about a client. Future analyses of service providers' strategies to advocate for clients within their work-world's interpretive terrain would therefore not only contribute to identifying the constraints that shape their role and influence, but also help make important distinctions between the inaction of street-level bureaucrats as negligence, versus that which may be a prudent strategy to avoid further harm.

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