

The relationship between party motivation and the agency dilemma in the constitution of the Brazilian Judicial Council¹

A relação entre a motivação partidária e o dilema da agência na constituição do Conselho Judicial Brasileiro

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Abstract:

This paper does a new reading of the process of creation of the National Council of Justice in regards to the dialogue between the theories of methodological individualism of Elster and of the principal-agent, to evidence how the dilemma of agency was subverted by the party motivation of judicial members, dislocating the legislative decision of Constitutional Emenda number 45/2004 to a point closer to the interest of the Judiciary. It is a descriptive-cognitive research, guided by systematic literature review, in which the result exposes the genesis of the cited council under a new theoretical support that translates, in an adjusted way, the empiric observations existent about the phenomenon. The research contributes to the agenda that is about the control agencies and judicial councils, providing another tool to instrument the themes of this area.

Keywords: Brazilian Judicial Council; principal-agent; Elster; party motivation; agency problem.

Resumo:

Este artigo realiza uma releitura do processo de criação do Conselho Nacional de Justiça mediante o diálogo entre as teorias do individualismo metodológico de Elster e do principal-agent para evidenciar como o dilema da agência foi subvertido pela motivação partidária de membros judiciais, deslocando a decisão legislativa da Emenda Constitucional n.º 45/2004 para um ponto mais próximo dos interesses do Poder Judiciário. Trata-se de uma pesquisa descritiva, norteadada pela revisão sistemática da literatura, cujo resultado expõe a gênese do citado conselho sob um novo suporte teórico que traduz, de forma ajustada, as observações empíricas existentes sobre o fenômeno. A pesquisa contribui para a agenda que trata das agências de controle e conselhos judiciais, propiciando mais uma ferramenta para instrumentalizar os temas dessa área.

Palavras-chave: Conselho Nacional de Justiça; principal-agent; Elster; motivação partidária; dilema da agência.

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1 Introduction

Political Science has power as its main focus. In this sense, in a democratic arrangement, permission for someone or some institution to exercise it must be accompanied by the proper existence of control. It is drawn from the classic lesson of the Federalists (1979, p. 131) that, if men were angels, there would be no need for government and if angels ruled, there would be no need for any means, external or internal, to regulate the actions of rulers. Elster (2009), in turn, states that power must be divided to be effective and that a State's commitments are only credible if it has, among other factors, an independent Judiciary.

The National Council of Justice (CNJ) is part of a perspective of control, division of powers and independence. As a very young body in the institutional design of the Brazilian State (created in 2004 through Constitutional Amendment No. 45), it interferes with and supports the political process of the Judiciary, conceived as an instrument of democratization.

This research makes a rereading of the process of creation of the CNJ, through the theoretical support that dialogues between Elster's methodological individualism and the *principal-agent theory*, guided by the systematic review of the literature, whose result portrays, in an original way, the process of creation of the council of interest, exposing the context of the crisis that served as a scenario for the Judiciary to disguise its self-interested motivation as if it were it was a restraint device (which would ideally guarantee the best decision). The result of this process was the constitution of the CNJ through an institutional design that favors the occurrence of moral hazard and adverse selection, with benefits for the Judiciary.

The justification for the study is based on the authentic contribution it offers to literature. First, it adheres to the research agenda that studies the dynamics of consolidation of the CNJ in the Brazilian democratic system (Sadek, 2010; Franco, 2015; Fragale Filho, 2011, 2013; Costa Filho; Carvalho, 2016). The second aspect is theoretical and refers to the proposal to dialogue two theories (Elster's individualism and *principal-agent*) that are unusual in the analysis of this phenomenon. The third aspect is empirical, the CNJ is a young body that lacks studies for a full understanding of its position in the machinery of power.

The article is divided into four sections, in addition to this introduction. The second section deals with structural theories. The third presents the creation of the CNJ from the perspective of the aforementioned theories, highlighting the relationship between the agency dilemma and party motivation. By desideratum, the final considerations.

2 Elster's methodological individualism and *principal-agent theory*

Rationality influences contemporary research in the analysis of social phenomena, especially when it focuses on institutions. According to Tsebelis (1998), rationality can be understood as the optimal correspondence between means and ends, its theoretical application falls especially on studies in which there is a rational actor as an analytical unit. Thus, the analysis of incentives, which determine the costs and benefits of choices, can influence the probabilities of the atomized preferences of individual rational agents and, consequently, the identification of the aggregate behavior of institutions.

Oliveira (2016, p. 113), in turn, points out that the concept of institutions ends up acquiring a centrality in the Social Sciences, especially in studies on society and the behavior patterns of individuals in political and economic interaction, despite the fact that this concept is presented in a polysemic way in other areas. Thus, for the development of the research, the delimitation of the two proposed theoretical frameworks is established below, which are aligned with the study of the rationality of institutions.

2.1 Elster – Ulysses Unchained

Elster (2009) proposes a more flexible theory of rational action, constituting his methodological individualism based on the argument that sometimes less is more or that there may be more benefits in having fewer opportunities than in having more; Such propositions can occur because of two hypotheses: a) the individual may benefit from having specific options that are not available, or available with some delay or at a high cost; b) The individual can benefit simply by having fewer options available. Based on the aforementioned hypotheses, according to Elster (2009), constraints can function as inducers of decisions aligned with individual preferences, which would make the generation of more pleasant results individually.

Elster (2009) bases his reflections on the passage from Homer's *Odyssey*, in which Ulysses acts strategically by putting wax in the sailors' ears and holding on to the ship's mast so as not to be seduced by the song of the sirens that would take him to the bottom of the sea, thus reducing the options available to achieve his goal. The metaphor serves as an allegory to reveal the self-control that the individual imposes on himself for the sake of some future benefit.

In the first chapter of Elster's (2009) work, the individual rationalizing his preferences and choices is highlighted, thus, the author works on the first level the idea of restrictions that

can be essential or incidental² and, on the second level, he establishes a dense model to explain these restrictions, separating: a) the reasons that lead the individual to restrict himself; and, b) the pre-commitment devices that serve to encourage better decision-making by this individual³.

In the second chapter, Elster (2009) clarifies how the assumptions developed for the analysis of the individual are used for collective studies. At this point, the Constitution is treated as a pre-commitment or self-restraint device⁴ created by politicians to protect themselves from their own predictable tendencies to make unwise decisions. Based on a complex theoretical model, Elster (2009) exposes the motives and devices of pre-commitment that are related to the Constitution, differentiating between essential and incidental restrictions, as well as revisiting arguments developed in his previous work (Ulysses and the Sirens).

As a pre-compromise device, the Constitution is perceived as currents used in moments of sanity to avoid destructive actions in moments of madness. It does not seek to delve into the distinction between Constitutions as essential restrictions and as accessory restrictions, the research appropriates the idea of understanding some actions as pre-commitment devices or restrictions devices⁵.

Two other important concepts for this study would be: a) delay mechanisms are rules, formalities and deadlines to be followed, which are inserted into the game, both in decision-making and in the implementation of actions, in order to avoid immediate decisions, quick decisions, avoiding investments in time; b) qualified majority mechanisms are provisions that impose the need for the Legislative Branch to deliberate on a decision that alters the Constitution by qualified majority, which guarantees greater stability (extension of the time horizon) so that constant changes in the rules of the game do not persist, thus eliminating the possible parasitism derived from decisions of simple majorities and imprisonment by majorities (Elster, 2009; Costa Filho, 2019). The concepts of delays and qualified majorities are described

² Essential constraints can be understood in terms of the benefits expected by the agent; Incidental restraints, on the other hand, can be defined by the benefit they actually provide to the agent, but are not chosen by the agent (Elster, 2009).

³To illustrate this thought, Elster (2009) exposes the main connections identified between the motives: overcoming passion; overcoming selfishness; overcoming hyperbolic discounting; overcoming strategic temporal inconsistency; and neutralizing or preventing a change of preference - and mechanisms for prior commitment - elimination of options; imposition of costs; definition of reward; delay creation; change of preference; investment in bargaining power; induction to ignorance; and induction of passion.

⁴Prior commitment or self-control are "constraints that an agent imposes on himself in the name of some expected benefit to himself" (Elster, 2009, p. 15).

⁵Elster (2009) warns that translating the concepts used from the study of individuals to the study of collective behavior can result in a misleading product, despite this, the same author also emphasizes that it is possible to extend the "pre-commitment theory of an individual choice" to the elaboration of a constitution, based on the fact that both the individual and the collectivity are divided rather than unitary. The same length is used for the development of the analysis of this study.

by Elster (2009) as the core of constitutional pre-commitment.

Elster (2009) goes on to argue that power must be divided to be effective, because omnipotence, far from being a blessing, can be a curse, such ideas are discussed in terms of credibility: "compromises can be credible when power is divided between the Executive, an independent judiciary, and a democratically elected legislature" (Elster, 2009, p. 191). A politically independent judiciary allows the government to be better able to meet the commitments made by the state.

In the third chapter, the issue of party motivation is highlighted. Elster (2009) addresses the concept by discussing the problem of partisan motivation, which occurs when a self-interested motivation is disguised, as if it were a restraint device to combat some vice. In this case, the real intention of the agents would be to maximize their own profits and not to combat a hypothetical addiction.

This research uses the dysfunction described in the previous paragraph to explain the strategic behavior of the Judiciary in the process of creating the CNJ, when they assume the dilemma of the agency as a result to be achieved, providing an arrangement that encourages the possible capture of the body that would control it.

2.2 Principal-Agent Theory

Delegation theory has a considerable area of intersection with agency (*principal-agent*) theory and its paradigms. Lupia (2001) points out that delegation occurs when some people ask others to perform tasks on their behalf, with the aim of overcoming personal inadequacies, generated by limitations of time, energy and talent. The research agenda has adopted the language of *principal-agent theory* to delineate the logic of delegation (Lupia, 2001; Campos, 2009; Mere; Ginsburg, 2007, 2009a, 2009b; Costa Filho; Carvalho, 2016, among others).
Complementing:

Modern scholarship has produced accurate knowledge about when delegation benefits those who are delegated. Many scholars adopt the language of *principal-agent* models [...] to describe the logic of delegation. The grantor in agency theory represents someone who delegates responsibility. The grantee represents someone to whom authority is delegated⁶. (Lupia, 2001, p. 3).

⁶ In the original: "Modern scholarship has produced more precise ideas about when delegation benefits those who delegate. Many scholars now adopt the language of principal-agent models [...] to describe the logic of delegation. The principal in principal-agent theories represents someone who delegates. The agent represents someone to whom authority is delegated." (Our translation)

The narrated relationship is characterized when the principal/plaintiff delegates functions/powers to an agent/defendant who exercises it, the agent has responsibilities that were delegated to him, with the aim of satisfying the expectations of the holder. Consequently, the *principal-agent relationship* seeks to reduce costs in decision-making and in the execution of tasks, allowing the principal to manage other demands that, in the absence of an agent, would be unfeasible (Campos, 2009).

From this, the *principal-agent* theory refers to the agency dilemma, which is marked when there is a conflict of interest between the principal/plaintiff and the agent/defendant. Since both individuals are utility maximizers, there is good reason to believe that the defendant agent will not act in the best interests of the principal (Jesen; Meckling, 1976).

The objectives of the parties involved are not always aligned, hence the dilemma arises naturally when: a) the information between the principal and the agency is asymmetrical, in the decision, the agencies have more knowledge of the business, trade or profession they carry out than the principal; b) the action of the agent in deciding, his level of effort, is not directly observed by the principal, due to the onerous nature of the agent's control; c) the outcome of agents' actions does not depend solely on them, but is permeated by external factors, which tend to be used as justifications rather than the main ones for the non-optimal results presented; In addition to this, there is still a high cost of monitoring whether external factors were really preponderant for the unsatisfactory result; d) the principal and the agent are rational agents and profit maximizers who do not necessarily align, decisions that are better from the point of view of one may not be better from the point of view of the other, which translates into the loss of the desired autonomy (Gorbaneff, 2001).

The two main problems that arise from this dilemma are moral hazard and adverse selection. Melo (1996, p. 72) clarifies that "*moral hazard* results from the non-observance of the agent's behavior in a post-contractual situation, *adverse selection* results from the non-observance of the information, values and objectives that guide the agent's decisions". Sato (2007, p. 52) states that moral hazard implies situations in which the actions of agents are unknown to the principal or are too costly to be observed; in turn, adverse selection is characterized by the fact that agents have information unknown to the principal or whose costs of obtaining them are high.

Lupia (2001, p.4) complements, by developing the concept of loss of agency, which translates into the difference between the externalities of the delegation for the main thing and the result desired by the delegation. The product is zero when the agent performs actions that are fully consistent with the principal's interests, increasing to the extent that the agent's actions

diverge from the principal's interests. Branch loss is high when the agent causes losses to the principal.

The question of how to mitigate the loss of agency and the risk of delegation occupies a certain centrality in the theory under analysis. Among the strategies created for this purpose, this study approaches the literature that suggests the improvement of the *principal-agent* relationship through the insertion of an intermediary agency, in order to monitor agent opportunism (Fama, 1980; Fama; Jensen, 1983; Jensen, 1993). The idea would be that the smaller the asymmetry of the information, the lower the cost of monitoring to avoid adverse selection, which would allow the agreed reward or the expected prize to be obtained.

The theory under debate has already been used for the study of the judicial councils and the CNJ (Garoupa; Ginsburg, 2007, 2009a, 2009b; Costa Filho; Oak, 2016, among others). It is no coincidence that Garoupa and Ginsburg (2007, 2009ab) use the *principal-agent model* to explain the Judicial Council and, specifically, treat judges as agents and society as principal. However, the problem with this relationship would be the risk that the agent will act in his or her own self-interest, in dissonance with the principal's preferences. The intermediary agent can solve, or minimize, the problems of the relationship between the plaintiff and the defendant by creating incentives to fulfill the agreed purpose.

The theory analyzed suggests that the creation of an intermediary organism makes possible the transaction between principal and agent with acceptable costs, eliminating moral hazard and adverse selection. The institutional design with an intermediary agency optimizes the performance of the agent in satisfying the interests of the principal. The concern would be to create a system of contractual incentives, that is, institutional designs, that would induce the agent in the direction of the principal's interest and reduce the losses generated by the agency's problem. Therefore, *the principal-agent relationship must stimulate efficiency in management by satisfying demand at an acceptable cost.*

Garoupa and Ginsburg (2009b) also warn that the asymmetry of information and specialization can create a new problem, which would be the capture of the Council of the Judiciary by the Judiciary itself or by an external body that wants to manipulate the Judiciary.

The research suggests that the externalities of the dilemma described above, which are negative for the delegation system, but positive for the Judiciary, explain the behavior of this Branch by interfering in the process of creating the CNJ, in order to influence the decision on the institutional arrangement and competence to an extent close to its preferences.

3 Brazilian Council of the Magistracy: the agency's dilemma fuels the partisan motivation of the Judiciary

In this section, the process of creating the CNJ is reread based on the theoretical supports described in the previous section. It is intended to expose in an original way the process of creation of the Brazilian Council of the Judiciary, through three subsections that address the context of the crisis that served as a scenario for the Judiciary to disguise its self-interested motivation as if it were a restriction device (which would ideally guarantee the best decision).

3.1 CNJ: Crisis, control and reform of the judiciary

The creation of the judicial councils led to the creation of this agency in Brazil. The expansion in recent decades has taken place in a context marked by reforms in the Judiciary around the world, structured around issues related to the independence, control and management of the system. These intermediary agencies seek to gauge the relationship between the Judiciary and other parts of the government and society, therefore, they are bodies that absorb powers of the Judiciary, limiting it directly.

The term Council of the Magistracy encompasses a very wide range of meanings, however, there is a common feature, they refer to the institutions inspired by the Council structured in France and increasingly adopted in other countries (Hammergren, 2002, p. 2). Its constitution is closely linked to the process of independence of the judiciary in continental Europe in the post-World War II period, as the democracies, then emerging in that period, rebuilt their political and social fabric (Carvalho; Leitão, 2013, p. 13).

As a reflection and following the model of the European trend, the first judicial councils in Latin America were established in Venezuela, in 1961, and in Peru, in 1969. In the rest of the region, they were implemented from the 1980s onwards under strong international pressure and under the aegis of "legal certainty" (Carvalho; Leitão, 2013, p. 14).

The first experience with the Council of the Magistracy in Brazil occurred in 1977, under the tutelage of a military government, specifically the National Council of the Judiciary (CNM), its main function was disciplinary and had no budgetary or administrative functions (Garoupa; Ginsburg, 2009a). The council was created by Constitutional Amendment 7/1977, which inserted Article 112 into the Federal Constitution of 1967 (Cruz Júnior, 2009).

Subsequently, this issue appeared in the Constituent Assembly that culminated in the

reopening of democracy, under the argument of the creation or not of an external control body of the Judiciary, however, the initiative did not materialize due to pressure from the Judiciary and sectors of society that saw in this act a remnant of the authoritarianism of the dictatorship (Sampaio, 2007). At this point, the CNM disappeared to make way for the Federal Justice Council, the latter being restrictively responsible for the administration of federal justice, the germ of the judicial council traditionally delineated by theory (Sadek, 2004a).

The recreation of a control body that extends to the entire structure of the Judiciary occurred only after 15 years of the redemocratization of the country (1988), when on 31/12/2004 the C.E. No. 45 created the CNJ, installing itself on 14/06/2005, with headquarters in Brasilia/DF and operating throughout the national territory. This research pays special attention to this last experience after the 1988 Constitution (CF/88).

The new post-redemocratization Order helped and imposed the participation of the Judiciary in the political arena, defining it as a superior institution for conflict resolution, that is, it transferred too much power to the former, transforming the magistrates into political actors who acted in different cases (Sadek, 2004a). It can be observed that the institutional design imposed by CF/88 resulted in the superimposition of the Judicial Branch over the Executive and Legislative Branches, reinforcing the role of these Branches in the public sphere (Sadek, 2004ab). As a result of this prominence, there was a boom in the system, caused by the increase in demand and the expansion of the field of action of magistrates (Sadek, 2004ab).

It did not take long for this increase in the field of judicial action to reveal the organizational, ideological and material failures of this Power, which resulted in its hypertrophy, which, consequently, affected the relationship with the other Powers, as well as its ability to provide jurisdictional services, given the accumulation of demands for justice. Thus, the crisis is installed within the Judiciary.

In Lula's government, the tension revealed its peak, as Sadek (2004a, p. 50) announces: "the confrontation between the Executive and the Judiciary began in April 2003, when the president defended the external control of the Judiciary and the opening of its 'black box' (sic)". On April 22 of the same year, the head of the Executive (newspaper *O Estado de S. Paulo*, April 23, 2003) said:

[...] We want equal justice for all and not a justice that takes more care of those who have a few réis accounts in their bank account. Many times the justice system does not act in accordance with the Constitution, which says that everyone is equal before the law. It is what I call class justice, which has class, which has a side.

There was also criticism from the Legislature. By way of example, the statement in the

great file, on 14/03/2003, of the federal deputy of the Workers' Party (PT) of Ceará, João Alfredo, who stated:

The Judiciary is the only one that opposes any type of social control. The struggle for external control comes from the Constituent Assembly. The OAB, the Catholic Church and the democratic entities of this country have been guided by this. This is the position of the Minister of Justice, Dr. Márcio Thomaz Bastos, and Attorney Rubens Approbato Machado, President of the national OAB. We cannot miss the opportunity, in this Legislature, to create external control mechanisms. (Sadek, 2004a, p. 51).

Criticism of the Judiciary has developed since the first courts, in colonial times, pointing out its inefficiency and its unsatisfactory model of justice. In the period prior to the promulgation of E.C. No. 45/2004, there was a deepening of this rejection and society began to question the role of this branch as a provider and administrator of justice; jurisdictional institutions are presented as incapable of responding to the growing demand for justice, becoming anachronistic and refractory to any modification (Sadek, 2004b). Ignorance of rights, on the one hand, and the perception that justice is seen as costly and slow, on the other, keep the majority of the population away from the courts (Sadek, 2004b).

If a justice system is incapable of providing legal assistance and working on equal terms, there is still an obligation to address delicate and problematic issues involving democracy and rights (Costa Filho, 2019). The lack of equal access to the legal order produces an institution that denies its citizens the main foundation for which it was managed: the realization of social, political and civil rights.

At this time, the Judiciary is facing an exacerbated tension against itself, as the other branches, part of society and the powers of the State come together to combat the political rise of magistrates and the inefficiency in the provision of judicial services. Guerra and Groth elucidate that:

On the other hand, when these powers of the State are unified around public options, the tendency is for the Judiciary to weaken, as the Executive and the Legislative coordinate changes capable of restricting the autonomy of judges, in a strategic game that the authors metaphorically synthesize as the "ups and downs" of *judicial independence*. (War; Groth, 2011, p. 8).

The two faces of the judiciary (power and service provider) faced pressures, which can be summarized in the following events: the proposal of the United Nations (UN, 2003) to carry out a kind of audit of the judiciary, due to criminal impunity (Sadek, 2004a); the World Bank (WB) proposed the creation of an administrative body to control the courts when it identified difficulties in approving reforms, It also identified alternative ways of resolving problems

related to access to justice⁷.

In this chaotic panorama, judges continued to seem to take refuge in the mystique of their robes, so that no type of institutional adversity could be investigated by the available disciplinary means, signs of the excessive corporatism of the class (Guerra; Groth, 2011). During the period, there was talk of a "black box of the Judiciary" to consider the state function of judges intangible, in the face of scandals and pressures of all kinds, even a Parliamentary Commission of Inquiry (CPI of the Judiciary) (Guerra; Groth, 2011).

As in a system of communicating vessels, society's dissatisfaction with the inefficient administration of justice, as well as the insufficient provision of jurisdictional services, fed back into the imbalance between the branches of government, and vice versa (Costa Filho, 2019). Thus, the difficulty of the Judiciary in satisfying the idealized interests of society (the plaintiff/principal) was portrayed, both in its face as a service provider and in its front of power (Costa Filho, 2019). The window of opportunity for the reform and control of the Judiciary was opened, which later became effective with E.C. No. 45/2004 and the creation of the CNJ.

With incentives for its creation, the CNJ is established as the pinnacle of Judicial Reform. The two premises described by Elster as the core of the constitutional pre-commitment⁸, in this case, the mechanisms of delay and qualified majority⁹ (Elster, 2009), were respected by the legislative process of constitutional reform that inserted the aforementioned agency into the system of power. Despite this, even respecting the mechanisms of delay and qualified majority, the result ended up receiving strong interference from the partisan motivation of the judicial system, especially from the top of the Judiciary, which sought to constitute a control body dominated by the Judiciary.

Therefore, partisan motivation finds fertile ground to be practiced, because the inherent product of the process of creating a control body, resulting from the dilemma of the *principal-agent*¹⁰ relationship, ends up serving as engines for the change of preference of the judicial system, with its leadership playing a leading role. In fact, the latter group changes its strategy during the process, as will be explained.

⁷ It encouraged the training of judges, reforms in the teaching of law and the decentralization of the administration of justice, and proposed a reform of the criminal justice system

⁸ Decisions influenced by passion, temporal inconsistency, and inefficiency.

⁹ Act on two levels: 1) design the ordinary governing machine in such a way as to counteract passion, overcome temporal inconsistency, and promote efficiency; 2) the splicing machine can be designed to be slow and complicated, in order to combat the same reasons as before and ensure the stabilization of the first-level mechanisms (Elster, 2009).

¹⁰ Let us remember that there are two main problems that arise from this conflict, moral hazard and the adverse selection exercised by the agency.

The agents who are part of the judicial group can be divided into two types: a) the top of the Judiciary, made up of the organs of the Judiciary listed in Article 92 of the CF/88 (courts, especially the higher courts) and their magistrates/ministers; b) the essential members of the Judiciary, listed in Articles 127 to 134 of the CF/88; along with actors with greater legal training. In this way, everyone is understood as part of the judicial system of the Judicial Branch.

3.2 The partisan motivation of the Judiciary sees an opportunity in the agency's dilemma

It is evident how the issue of backwardness and qualified majorities interacted with the determinants of the creation that made it possible to structure a partisan behavior of the Judiciary, in order to constitute an intermediary agency not marked by society and susceptible to being captured. Such partisan behavior gains momentum from the judicial system's perception of the benefits brought by the effectiveness of the externalities of the agency's dilemma, which would weaken the oversight body that was being configured in the legislative arena.

The delay mechanism is characterized by the time it took to conceive the CNJ, 16 long years, since since the Constituent Assembly had been a series of discussions about the creation or not of a council to control the Judiciary¹¹ (Sampaio, 2007). This debate is maturing and has as a turning point the proposal of Deputy Hélio Bicudo, in 1992, of the first Constitutional Reform Project (PEC) to reform the Judiciary (PEC No. 96/92), which did not yet provide for a control body.

It was only in 1995, when Deputy Jairo Carneiro proposed an amendment to the aforementioned PEC that was being processed in the Chamber of Deputies, that the debates on the CNJ heated up; reproduced what happened in the Constituent Assembly, with groups in favor and against the creation of this body.

The aforementioned PEC was affected by the presentations, unarchiving and unions, which were processed in the legislative chambers. In 2000 it was renamed PEC No. 29/2000. In the following years, the PEC of the Reform of the Judiciary received several amendments

¹¹ However, due to pressure from the Judiciary and sectors of society, which saw in the aforementioned control body a remnant of the authoritarianism of the dictatorship (PIRES, 1987 apud SAMPAIO, 2007, p. 241), the Constituent Assembly valued the full government of the Judiciary.

and returned to the Constitution and Justice Commission (CCJ). In 2003, the last of the four rapporteurs was appointed to the PEC, which was enacted in 2004 through a legislative process that respected the qualified majority mechanism for constitutional amendment.

The aforementioned partisan motivation in the institution of E.C. 45/2004 is highlighted, which is the result of the interaction of the judicial system with the legislative process of the aforementioned reform, with greater interference carried out by the leadership of the Judiciary. First, it will analyze the judicial system that affected the legislative process that led to the creation of the CNJ, and then it will demonstrate how the leadership of the Judiciary was able to exert greater influence by shifting the decision of the legislature to a point closer to its own interests.

The path between the crisis of the Judiciary and the enactment of the Judicial Reform is marked by an interesting fact, the members of the judicial system ended up occupying a prominent role in the process of creating the CNJ. There has been an active participation of these members since the election of the rapporteurs of the Amendment Reform, being composed of four and with a majority of law graduates¹².

The newspaper nº 17/año 5, of the Association of Judges for Democracy (AJD), clarifies the massive participation in the work of the Commission for the Reform of the Judiciary of various representative entities that are related to the judicial system, including itself:

The same meeting was attended by other national entities representing judges — the Association of Magistrates of Brazil and the Association of Federal Judges — and members of the Public Prosecutor's Office — the National Confederation of Public Prosecutors and the National Association of Prosecutors of the Republic — as well as the President of the Federal Council of the Brazilian Bar Association. (Association of Judges for Democracy, 1999, p. 01).

The impression that the Judicial Reform is structured by members of the judicial system is reinforced when the professional profile of the parliamentarians who were part of the Special Commission in charge of introducing changes in the structure of this branch is analyzed. According to Sadek and Dantas (2001), 90% of the 31 parliamentarians who made up the aforementioned commission in 1999 had law degrees. The then president of the Chamber of Deputies, Michel Temer, played a fundamental role in this configuration (Sadek; Dantas, 2001).

Paiva (2012) complements the intense participation of certain figures¹³ of the Judiciary in this legislative process, including Judge Nelson Jobim, who was a constituent deputy in 1988

¹² deputies Hélio Bicudo, Zulaiê Cobra, Bernardo Cabral and José Jorge. Of these, only the last one does not have a degree in Law.

¹³ Example: Nelson Jobim, Nilo Batista, Márcio Thomaz Bastos, among others. In addition, the institution of the OAB (Sampaio, 2007, p. 241).

and rapporteur of the Constitutional Review¹⁴, Minister of Justice from 1995 to 1997 and Minister of the Federal Supreme Court (STF) from 1997 to 2006. This character participates and interferes in the course of the Reform, especially when Jobim assumed the presidency of the STF, from June 2004 to March 2006, a period that coincides with the crucial moment of the processing and implementation of E.C. 45, especially with regard to the installation of the CNJ.

The behavior of the leadership of the Judiciary, made up of a group of magistrates representing a smaller group of the judicial system, draws attention in this process. Initially, the aforementioned leadership was resistant to any change in the *status quo*, however, it changed its preference throughout the process, becoming less combative and more receptive to the Reform. This change aims to safeguard the corporate interests of the group; A phenomenon that was not sudden and disinterested.

For a long time, a significant part of the judiciary was resistant to any idea of control. Sadek (2004a) evidences this when he conducted a survey with this public in 1993 and observed a percentage against the creation of the CNJ that was close to 87% of this group. This aversion diminished substantially over time, so much so that in 2000, in a new survey of magistrates, a quarter (25%) were against the creation of the CNJ; 21% said creation is irrelevant; and 39% in favor (Sadek, 2004a).

In addition, Paiva (2012) exposes the direct interference of the leadership of the Judiciary and class associations in the process of creating the CNJ, revealing the often divergent interests and pressure mechanisms of these representations.

The pressure exerted by the leadership of the Judiciary¹⁵ was more effective, it had a lower transaction cost, since the negotiation was direct with the Executive, which guaranteed some support from the government's allied base in Congress (Paiva, 2012). On the other hand, class associations had higher transaction costs because they did not present an agenda of aligned interests and worked in a dispersed manner in dealing individually with parliamentarians (Paiva, 2012). The interests and preferences of these two groups were not homogeneous, especially in the type of control and independence of the Judiciary (Costa Filho, 2019).

It is evident how the agents of the judicial system invested resources and changed their preferences, with the aim of bringing the result of the Reform closer to a point closer to their interests. Paiva (2012) also points out the most effective means used by the high judicial leadership to guarantee a greater predominance in this dynamic.

¹⁴ This was incorporated into the initial proposal for Judicial Reform - PEC 96/1992.

¹⁵ Representatives of the superior courts.

It is necessary to point out that the idea of creating an institution of control was not originally defended by the leadership of the Judiciary, especially by the category of the Judiciary. However, when they realized that the implementation of this body would be a matter of time, this group ended up appropriating their legitimization process, disguising the interested purpose as if it were a restriction mechanism (Costa Filho, 2019).

The change in behavior was mainly motivated to ensure the maintenance of this summit as the pinnacle of this new arrangement and the redesign that the CNJ represents; as well as eliminating the possibility of a deeper change in the disposition of the Judiciary, harming the idea of deepening the control and efficiency of services; This will be better dealt with later, when the agency's dilemma is highlighted.

In a panoramic way, the aforementioned crisis of the Judiciary weakened the possibility that this Power would remain unchanged, being a prelude to the changes that would come. From a strategic point of view, members of the judicial system, especially its leaders, are striving to change the legislative outcome of the reform to a point close to their preferences. In this interaction, the judicial leadership navigated the flow of the entire judicial system, yet was more efficient and asserted its own interests to ensure the creation of a subjugated council under its aegis. To this end, some dysfunctions derived from the moral hazard and adverse selection inherent in the constitution of an intermediary control agency are instrumentalized to their benefit.

3.3 The relationship of the Summit of the Judiciary with the type of control exercised by the CNJ

In addition, it portrays how the interest of the most prominent group in the judicial system, in this case the leadership of the Judiciary, was aimed at maintaining the problems derived from the dilemma of the agency to achieve greater prevalence in the new architecture of power after the implementation of the CNJ by E.C. 45/2004.

Considering that the Brazilian Judicial Council represents a *principal-agent* relationship, therefore, the agency's dilemma is externalized by the moral hazard and adverse selection generated by the creation of the CNJ and, in the proposed case, ends up not creating incentives to fulfill the agent's contractual/institutional purpose.

The dilemma/problem of the agency can be seen in the discussion about the type of independence to which the Judiciary would be subjected, considering the creation of a control

body. The CNJ's proposal for independence influences whether the interest and behavior between the client and the agency would be aligned, as well as the level of information asymmetry.

This issue was addressed in two ways: a) part of society, the judicial system, some class associations and the other branches (Legislative and Executive) understood independence in democratic terms (through the implementation of checks and balances¹⁶), submission to ¹⁷ accountability and the implementation of greater efficiency in their role as providers and administrators of justice, consolidated through an external control body that reduces moral hazard and adverse selection; b) the leadership of the Judiciary with greater prominence, and other actors dispersed in the judicial system, such as some associations that represent these professionals, understood independence in terms of not displacing any portion of their power outside of themselves, especially control, as well as seeking the preservation of their corporate interests, thus maintaining part of the problems of moral hazard and adverse selection.

The beginning of the debate on the creation of an intermediary agency was marked by the defense of an external control body, with the dominant participation of members external to the Judiciary, which would reduce the asymmetry of information and minimize the costs of follow-up transactions. This configuration was defended by society and by the Legislative and Executive Branches, as well as by the judicial system (lawyers, professional associations, etc.).

As an external control, the CNJ could carry out a social control in power that would represent a channel of inspection of society. It is no coincidence that Sadek (2004b, p. 93) argued that "[between] [...] the Judiciary is the most stable and the one with the fewest control and inspection mechanisms, either by society or by other powers." Sadek (2004a, p. 55) also states: "the other two powers, the Executive and the Legislative, are subject to the direct control of citizens through voting. It will not be easy to find arguments for the Judiciary to remain immune to external evaluations."

Carvalho (2006) also discusses the debate on the type of control:

There is a clear disagreement between the Government and the leadership of the Judiciary regarding the creation of the CNJ. Disagreement takes shape over the composition of the Council. High court and state judges preferred a more corporate Council, composed entirely of court judges. The government, in turn, bet that an eclectic or "secular" profile of the Council would provide greater credibility,

¹⁶Known as *checks and balances*: disposition/control of power through its interpenetrating division among its constituent parts.

¹⁷The term of English origin does not have a precise equivalent in Portuguese. In any case, Pinho and Sacramento (2009) explain that the meaning of the concept of the word accountability implies responsibility (objective and subjective), control, transparency, accountability, justifications for actions that were or were not performed, rewards and/or punishments.

mitigating the influence of the corporation in its decisions. (Carvalho, 2006, p. 107).

The judicial leadership, realizing that the idea of control of the Judiciary was consolidated in society, changed its preference for being refractory to this agenda, understanding that it would not have the strength to stop this transformation, therefore, it acted strategically seeking to move the decision of the legislative process of E.C. 45/2004 to a point closer to its interest. In this case, an internal control body, as already indicated above.

In other words, an external intermediary agency would not allow uncontrolled action by the components of this Power, which would lead to behavior that would be distant from the interests of the principal (the company); therefore, the constitution of an internal intermediary agency is contemplated to ensure minimal changes in the *status quo* which was in force until then. This debate, whether of internal or external control, lasted until after the constitution of the CNJ, in accordance with ADIN No. 3.367-1¹⁸, of the Brazilian Magistracy Association (AMB).

The product of this dialectic was the creation of the CNJ, with an internal control bias for the entire structure of the Judiciary, and its composition was a mixture of internal members, represented by magistrates and members of the upper structure of the Judiciary, totaling nine members; and "external" members (non-magistrates), represented by members belonging to the essential structure of justice. such as lawyers, members of the *Parquet* and citizen of notable legal knowledge and impeccable reputation, totaling 06 members. A substantial part of the intentions desired by the judicial leadership were fulfilled and a smaller part of the intentions desired by the Executive, the Legislative, society and part of the actors that make up the judicial system.

It should also be noted that the summit of the Judiciary was also endowed with privileged spaces in the institutional architecture of the council, in particular: important positions of power (Presidency; attribution of the National Magistrate Corregidor; General Secretariat), mastery of the agenda and specific competence to report on certain matters. An institutional design that creates clear privileges for the Judiciary and encourages the maintenance of control of information and the practices of institutional actions that may not be aligned with the interest of society.

¹⁸ In 2006, the Supreme Court of Justice ruled on the matter in ADIN No. 3.367-1, filed by the AMB, describing the aforementioned body as the internal control of the Judiciary and chose the Legislative Branch, with the help of the Courts of Accounts, as the authentic "external control".

In general terms, it can be concluded that the leadership of the Judiciary has been relatively successful in achieving partisan objectives of preserving its interests under the guise of a restrictive device, using the independence of the power in question as a "Trojan horse", thus influencing the institutional design of the CNJ to make its imprisonment less burdensome. create an agreement that allows the occurrence of moral hazard and adverse selection to be maintained. Certainly, this artifice did not guarantee the best result in terms of accountability and democratization of the judicial system, maintaining much of the corporatist and hermetic characteristic of this power. On the other hand, the institutional design of the CNJ allowed the aforementioned leadership to safeguard a great deal of control over the behavior of this new body, as well as to remain well informed about the activities of this body.

It is necessary to emphasize that despite the effort to create a more friendly council for the Judiciary with incentives for its capture, this does not happen automatically, because the intermediary agency, when it is instituted, ends up building its own trajectory, which is affected by several other variables and interactions not foreseen when it was formatted. It is up to the future research agenda, then, to demonstrate whether or not the capture of membership was effective, as initially desired, as well as to portray how the trajectory of this council relates to its institutional behavior.

From the foregoing, it can be deduced that the problems derived from the dilemma of the agency, which were perceived by the Judiciary as privileges in the ordering of power, created incentives for the exercise of partisan motivation by the judicial system, with better results for the leadership of the Judicial Branch. This context made possible the creation of an institution that represents some change, not necessarily the ideal in terms of delegation, satisfying, albeit in a deficient way, the general needs of independence, *accountability* and management of the Brazilian Judiciary.

4 Conclusion

Based on an original research design, which dialogues Elster's methodological individualism with the *principal-agent* theory, this study strove to take a new look at the insertion of the CNJ in the Brazilian democratic system, arguing that the Judiciary sought to change the decision to create the CNJ to a point closer to its interest. preserving its corporatist and hermetic characteristic.

Therefore, the Judiciary used partisan motivation mechanisms to create conditions to remain as uncontrolled as possible in its actions (moral hazard) and to concentrate information

that is difficult for society to access (adverse selection) in this new reality represented by the creation of the Brazilian Judiciary Council.

To this end, the milestones to be discussed were presented, along with the theoretical assumptions of interest. Elster's methodological individualism lent this research reflections on institutional behavior, decisions subject to delays and qualified majorities, as well as the issue of partisan motivation in the legislative process. In turn, the *principal-agent theory* contributes to the debate on the delegation of power, the dilemma of the agency and the triangular relationship between the principal, the agent and the intermediary agency.

Next, the convergence between partisan motivation and the agency's dilemma in the present case could be observed in the performance of the Judiciary in the legislative process of creating the CNJ. The aforementioned Power sought a way to guarantee a system of contractual incentives that would bring its interest closer to that of the intermediary agency, ensuring the maintenance of the asymmetry of information and interested decisions existing to the detriment of the plaintiff (company).

From all of the above, it can be deduced that an adequate monitoring system was not formatted that would allow the behavior of the Judicial Branch (agency) to converge with the desire of society (principal) at the lowest possible cost. On the contrary, the incentive for the capture of the CNJ by the aforementioned Power persisted, by creating an internal body instead of an external one, with almost 60% of its members coming from the judicial leadership, even reserving for them the main spaces of power in the council, control of the agenda and the specific competence to report on certain processes. This is the portrait of the moment of the creation of the intermediary agency analyzed, but this capture of belonging is not automatic, since institutions end up moving an unpredictable range of variables in their trajectories. The effort of the future agenda, then, must incorporate studies on the behavior and trajectory of the CNJ.

It is understood, therefore, that the proposed analysis has profound implications for the study of the aforementioned theories, as well as for the study of agencies, especially control, since it is an original perspective that has its explanatory potential from a more precise rereading of the existing empirical information. In addition, the research made a deeper insertion in the theories of reference, as well as addressed aspects of the origin of the judicial councils and the context of crisis and control in which the CNJ is inserted.

Referential

ASSOCIATION OF JUDGES FOR DEMOCRACY. AJD in the Commission for the Reform of the Judiciary. **Official publication of the Association of Judges for Democracy**, São Paulo, year 5, n. 17, 1-2, Jun./Jul., 1999.

CAMPOS, C. R. Delegation and regional integration: theoretical aspects of the principal-agent paradigm applied to the European system. **International Context**, Rio de Janeiro, v. 31, n. 1, p. 85-114, Apr. 2009.

CARVALHO, E. The external control of the Judiciary: Brazil and the experiences of the Councils of Justice in Southern Europe. **Revista de Informação Legislativo**, Brasília, v. 43, n. 170, p. 99-109, April/June 2006.

CARVALHO, E.; Leitão, N. The power of the judges: the Federal Supreme Court and the institutional design of the National Council of Justice. **Revista de Sociología y Política**, Curitiba, v. 21, n. 45, 13-27, Mar. 2013.

COSTA FILHO, J. V.; CARVALHO, E. Democratic Control and Independence of the Judiciary: The Councils of the Judiciary in Latin America. *In*: REBOUÇA, Gabriela M. ; SOUZA JÚNIOR, José G. de ; CARVALHO NETO, Ernani R. de (org.). **Shared experiences of access to justice: theoretical and practical reflections**. Santa Cruz do Sul: Esserenel Mondo, 2016. pp. 17-32.

COSTA FILHO, J. V. **To the magistrates everything?: an analysis of the decisions of the National Council of Justice (2005-2015)**. 2019. Thesis (PhD in Political Science) - Graduate Program in Political Science, Federal University of Pernambuco, Recife, 2019. Available at: <https://repositorio.ufpe.br/handle/123456789/40078>. Accessed on: 05 Apr. 2023.

CRUZ JÚNIOR, E. Q. The National Council of Justice and the improvement of the National Judiciary. **THEMIS - Journal of the Higher School of the Magistracy of the State of Ceará**, Fortaleza, v. 7, n.2 p. 75-95, 2009.

ELSTER, J. **Ulisses Liberto: estudo sobre racionalidade, pre-compromisso e restraints**. São Paulo: Editora UNESP, 2009.

FAMA, E. F. Agency problems and the theory of the firm. **Journal of Political Economy**, Chicago, v. 88, n. 2, p. 288-307, 1980.

FAMA, E. F.; JENSEN, M. C. Separation of ownership and control. **Journal of Law and Economics**, Chicago, v. 26, n. 2, p. 301-325, jun. 1983.

Fragale Filho, R. The National Council of Justice and its possible institutional impacts. *In*: ANNUAL MEETING OF THE NATIONAL ASSOCIATION OF POSTGRADUATE AND RESEARCH IN SOCIAL SCIENCES (ANPOCS), 35., 2011, Caxambu-MG. **Annals [...]**. Caxambu: ANPOCS, 2011. pp. 1-23.

FRANCO, I. C. S. How are **judges judged?** an analysis of the disciplinary control of the National Council of Justice (2005-2013). 2015. Dissertation (Master of Laws) - Academic Master's Program at the São Paulo School of Law of the Fundação Getúlio Vargas, São Paulo,

2015. Available at: <https://bibliotecadigital.fgv.br/dspace/handle/10438/13645>. Access date: 15 Jan. 2023.

GAROUPA, N.; GINSBURG, T. The Economy of the Judicial Councils. **Annual Documents of the Latin American and Caribbean Association of Law and Economics (ALACDE)**, Berkley, p.1-48, 2007. Available at: <https://escholarship.org/uc/item/4264z9r8>. Access date: Dec 21 2022.

GAROUPA, N.; GINSBURG, T. The custody of guardians: judicial councils and judicial independence. **American Journal of Comparative Law**, Chicago, v. 57, p. 201-232, 2009a.

GAROUPA, N.; GINSBURG, T. Comparative Law and the Economics of Judicial Councils. **Berkley Journal of International Law (BJIL)**, Berkley, n. LE08-036, p.1-40, 2009b. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1299887. Access date: 25 Nov. 2022.

GORBANEFF, Y. Theory of agency and its applications in marketing. **Journal of Administrative and Social Sciences**, Bogotá, n. 18, p. 37-46, jul./dez. Year 2001.

GUERRA, G. R.; GROTH, T. R. Mimicry of judicial policy : decisional and normative limits of the National Council of Justice and the resignification of the independence of the judiciary. *In*: CONGRESSO NACIONAL DO CONPEDI, 19., 2011, Florianópolis. **Annals** [...]. Florianópolis: Fundação Boiteaux, 2011. p. 1872-1896.

HAMILTON, A.; MADISON, J.; JAY, J. **The Federalist**. São Paulo: Abril Cultura.1979. (Thinkers Collection)

HAMMERGREN, L. Do judicial councils promote judicial reform? lessons from Latin America. **Rule of Law Series**, Washington, n. 28, p. 1-44, June 2002.

JENSEN, M. C.; MECKLING, W. H. Firm Theory: Managerial Behavior, Agency Costs, and Capital Structure. **Journal of Financial Economics**, Rochester, n. 3, p. 11-25, 1976.

JENSEN, M. C. The modern industrial revolution, the exit and failure of internal control systems. **Revista de Finanzas**, Belén, v. 48, n. 3, p. 831-880, 1993.

LUPIA, A. Delegation of power: theory of agency. *In*: SMELSER, N. J.; BALTES, P. B. (eds.). **International Encyclopedia of Social and Behavioral Sciences**. Oxford, United Kingdom: Elsevier Science Limited, 2001. v. 5, p. 3375 - 3377.

MELO, M. A. Governability and State Reform: The Principal Agent Paradigm. **Revista do Serviço Público**, Brasília, v. 12, n. 1, 67-82, Jan./Apr. 1996.

OLIVEIRA, A. V. Social Sciences in Dialogue: A Study of Institutions and Economic Change. **Revista Agenda Política**, São Carlos, v. 4, n. 1, p. 112-129, Jan./Apr. 2016.

PINHO, J. A. G.; SACRAMENTO, A. R. S. Accountability: Can We Translate It Into Portuguese Yet? **Revista de Administração Pública**, Rio de Janeiro, v. 43, n. 6, p. 1343-1368, nov./dez. 2009.

PAIVA, G. A. M. **The reform of the judiciary in Brazil**: the political process of processing

the 45th Amendment. 2012. Dissertation (Graduate Program in Public Policy and Society) – State University of Ceará, Fortaleza, 2012. Available at: <https://siduece.uece.br/siduece/trabalhoAcademicoPublico.jsf?id=73044>. Access date: May 8, 2022.

SADEK, M. T.; DANTAS, H. Law graduates in the reform of the Judiciary: technicians or curious? **São Paulo em Perspectiva**, São Paulo, v. 14, n. 2, p. 101-111, 2000.

SADEK, M. T. Judicial Power: Perspective of Reform. **Opinião Pública**, Campinas, v. X, n. 1, p. 01-62, May 2004a.

SADEK, M. T. Judicial Power: Change and Reform. **Estudos Avançados**, São Paulo, v. 18, n. 51, p. 79-101, Aug. 2004b.

SADEK, M. T. Judicial Power: A New Institution. **Cadernos Adenauer**, Rio de Janeiro, n. 1, p. 13-21, 2010.

SAMPAIO, J. A. L. **The National Council of Justice and the independence of the judiciary**. Belo Horizonte: Editora Del Rey. 2007.

SATO, F. R. L. The theory of agency in the health sector: the case of the relationship of the National Agency for Supplementary Health with the operators of complementary care plans in Brazil. **RAP**, Rio de Janeiro, v. 41, n. 1. p. 49-62, Jan./fev. 2007.

TSEBELIS, G. **Hidden games: rational choice in the field of comparative politics**. São Paulo: Edusp, 1998.